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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
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WASHINGTON, DC

(two briefings)

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- WHEN:** June 9 at 9:00 am
WHERE: Ralph Metcalfe Federal Building
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77 West Jackson Blvd.
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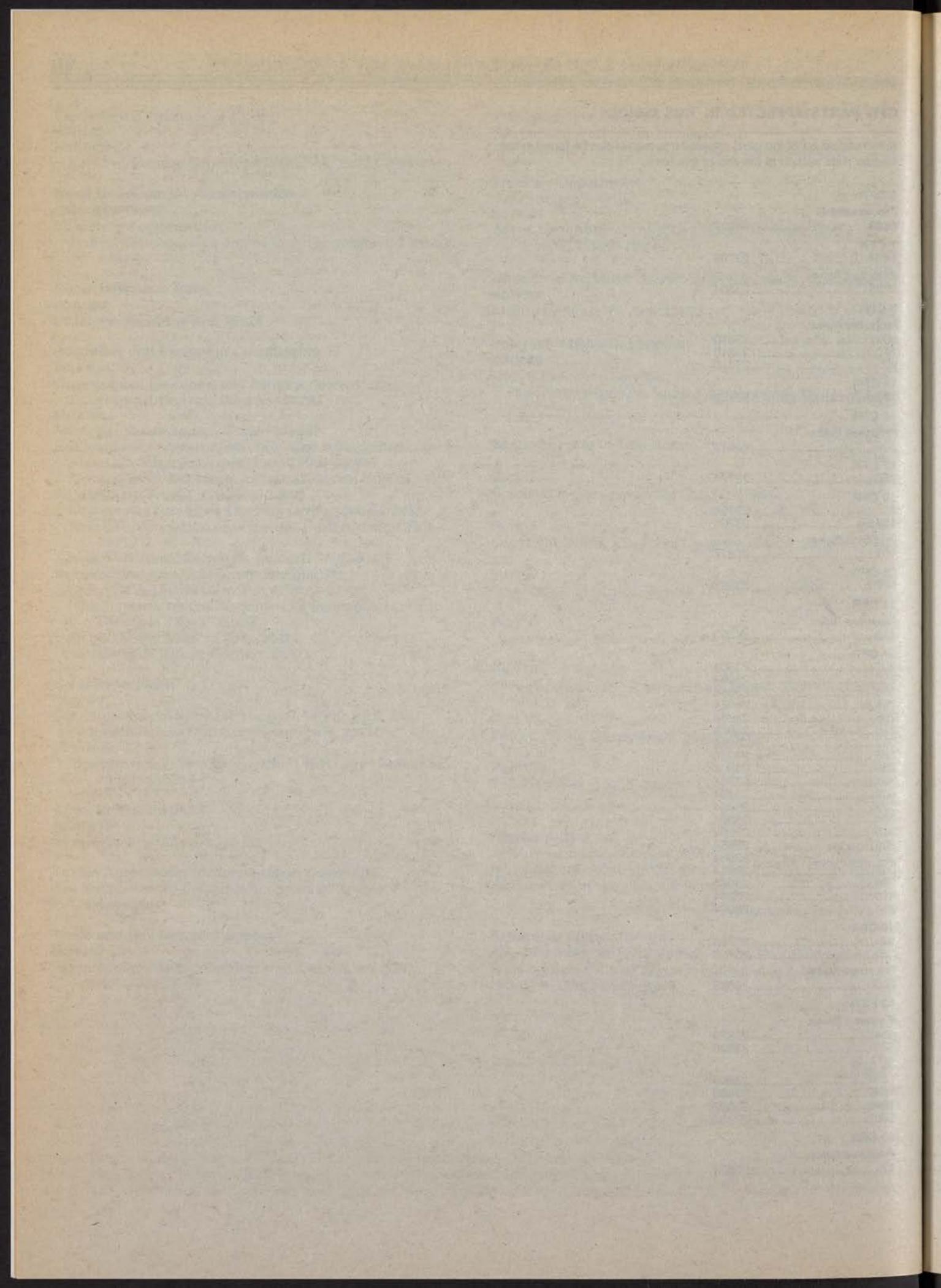
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1434

RIN 0560-AD73

General Price Support Regulations for Honey

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations with respect to the Honey Price Support Loan Program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 207 of the Agricultural Act of 1949, as amended (the 1949 Act). The amendments made by this interim rule will provide price support loan rates for 1991 and subsequent crop years; revise the limitation on the total amount of payments a producer may receive; revise the provisions of the honey marketing assessment; lessen the administrative actions CCC imposes on producers who violate the loan and loan deficiency payment (LDP) agreements; provide more authority to State and county committees in administering the program; eliminate obsolete provisions, and incorporate the provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994 and the Omnibus Budget Reconciliation Act of 1993.

DATES: Interim rule effective May 9, 1994. Comments must be received on or before June 8, 1994 in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415,

Washington, DC 20013-2415; telephone 202-720-7641. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday, except holidays, in room 3623, South Agriculture Building, USDA, 14th Street and Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Tegeler, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013-2415; telephone 202-720-3110.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and has been reviewed by OMB.

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 because the CCC is not 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 these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12372

This program 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).

Executive Order 12778

This interim rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this interim rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction,

administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

Public reporting burden for the information collections contained in this regulation with respect to price support programs is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. The information collections have previously been cleared under the current regulations by the Office of Management and Budget (OMB), and assigned OMB Nos. 0560-0087 and 0560-0129.

Comments

Since producers are currently making decisions regarding honey which may be pledged as collateral for CCC price support loans, it has been determined that it is impractical and contrary to the public interest for CCC to comply with any further rulemaking requirements with respect to amending the eligibility requirements. Accordingly, the provisions of this interim rule are effective upon publication in the *Federal Register*. Comments are requested, however, and will be taken into consideration when developing the final rule. This interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the *Federal Register* as soon as possible.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices and provide interim financing and assistance to producers in the orderly marketing of eligible commodities. Section 207 of the 1949 Act was amended by the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66 (Budget Act). In addition, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994, Public Law 103-111 (Appropriations Act) provides special provisions that affect the operation of the honey price support program in fiscal year 1994. This interim rule amends the

regulations for the price support program for honey to reflect these legislative changes. In addition, this interim rule amends the regulations to provide more authority to State and county committees in administering the programs, lessen the administrative actions CCC imposes on producers who violate the loan and LDP agreements, and make minor changes for the correction of errors and omissions as specified herein.

The Budget Act amended the 1949 Act to:

- (1) Provide price support loan rates for the crop years 1991 through 1998;
- (2) Eliminate the marketing assessment for the 1994 and subsequent crops of honey; and
- (3) Limit the total amount of payments that a person may receive.

The Appropriations Act provides that no funds made available by that Act may be used to support the price of honey which results in the following:

- (1) Elimination of payments to producers during the 1994 fiscal year for the 1994 crop of honey; and
- (2) Limiting the amount of forfeitures of 1994-crop honey loan collateral during 1994 fiscal year to support the price of honey to zero pounds of honey.

Accordingly, this interim rule amends: (1) Sections 1434.1(a), 1434.25(a)(1) and 1434.27(c)(3) to exclude, for the 1994 fiscal year for the 1994 crop year of honey, the provisions that allow a producer to:

(a) Repay a loan at less than the principal loan amount plus charges and interest;

(b) Request and obtain a LDP by agreeing to forego a loan on that quantity of honey; and

(c) Deliver the quantity of honey pledged as collateral for loan to CCC in settlement for such loan;

(2) Section 1434.6(b) to incorporate the price support loan rates;

(3) Section 1434.7 to add paragraphs (c)(1) and (c)(2) which were inadvertently omitted in the CCC final rule published on November 4, 1993, (58 FR 58739);

(4) Section 1434.13(b) to update the provisions of the marketing assessment for honey to specify that such assessment applies only to the 1991 through 1993 crops of honey;

(5) Section 1434.14 by removing and reserving the section because administrative offsets are currently provided in part 3 of this title and part 1403 of this chapter;

(6) Section 1434.16(a)(1) to correct the title of Form CCC-666 LDP;

(7) Section 1434.17 to revise the provisions of the payment limitation to specify such limitation for the 1994 through 1998 crop years; and

(8) Section 1434.27(c) by adding paragraph (3) to provide that if the amount of the loan indebtedness for 1994-crop year loan during the 1994 fiscal year is not repaid and CCC forecloses on the honey in accordance with § 1434.28, the settlement value of the honey shall be determined by CCC to be the proceeds received as a result of the sale of such honey.

In addition to the amendments provided by the Budget Act and Appropriations Act, the following regulatory revisions are intended to make the price support program for honey more user friendly.

Producers who violate the loan note and security agreement by moving farm-stored loan collateral from the structure designated for the storage of such loan collateral, without prior written consent of the county committee, are subject to liquidated damages. In some cases, collateral is moved to other structures on the farm which makes it possible for CCC to perfect its security on such collateral. CCC has determined that when such security can be established, producers should not be subject to such liquidated damages. Accordingly, this interim rule amends § 1434.23(b)(2) to clarify that unauthorized removal only includes cases where CCC cannot obtain the first lien on the collateral.

It is difficult to prove the amount of damages to CCC for loan and LDP violations committed by producers; however, 20 and 50 percent of the loan and LDP rates, as applicable, were established for first and second offenses, respectively, when the county committee determined that the producer acted in good faith. CCC has determined that the liquidated damages can be reduced without affecting the administration of the loan and LDP programs. Accordingly, this interim rule amends § 1434.23 to: (a) Decrease the liquidated damages amounts; and (b) add paragraph (k) to provide that any or all of the liquidated damages may be waived under certain conditions.

In addition, under certain conditions, producers who violated loan and LDP provisions may be denied loans and LDP's on commodities stored on the farm. CCC has determined that this penalty is severe and should only be assessed when the county committee determines that such action is necessary to protect the interest of CCC.

Accordingly, in § 1434.23, paragraphs (d)(2)(i), (d)(2)(ii), and (e) have been amended to remove the requirement for denial of farm-stored loans or LDP's.

In addition, in § 1434.23, paragraphs (a)(2), (a)(3), and (c), and in § 1434.26, paragraph (b)(3) have been amended to delete the references to Forms CCC-700

and CCC-701 and include the Form CCC-666 LDP.

This interim rule amends § 1434.24 by adding paragraph (f) to provide if a producer moves honey from storage without prior approval on a nonworkday, the producer will not be subject to administrative actions providing the producer notifies the county office on the next workday that the honey has been moved and such movement is approved by CCC.

List of Subjects in 7 CFR Part 1434

Honey, Loan programs/agriculture, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, 7 CFR part 1434 is amended as follows:

PART 1434—HONEY

1. The authority citation for 7 CFR part 1434 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425a, 1446h, 4601 et seq; 15 U.S.C. 714b and 714c.

2. Section 1434.1 is amended by revising paragraph (a) to read as follows:

§ 1434.1 Applicability.

(a) The regulations of this part are applicable to the 1991 and subsequent crops of extracted honey, except that §§ 1434.24(a)(2)(ii), (e)(1)(ii), and (e)(2); 1434.25(a)(2); 1434.26; and 1434.27 are not applicable for the 1994 crop in fiscal year 1994. These regulations set forth the terms and conditions under which price support loans shall be entered into and loan deficiency payments made by the Commodity Credit Corporation (CCC). Additional terms and conditions are set forth in the note and security agreement or the loan deficiency payment application which must be executed by a producer in order to receive a price support loan or loan deficiency payment. Purchase agreements shall not be offered for the 1991 and subsequent crops of honey.

* * * * *

3. Section 1434.6 is amended by revising paragraph (b) to read as follows:

§ 1434.6 Availability, disbursement, and maturity.

* * * * *

(b) Price support loans at a national average price support rate of 53.8 cents per pound for 1991 through 1993; 50 cents per pound for 1994 and 1995; 49 cents per pound for 1996; 48 cents per pound for 1997; and 47 cents per pound for 1998 crops of honey are available to producers as soon as announced by CCC, but not earlier than April 1 of the year in which the honey is produced and extracted and not later than March

31 of the year following the year in which the honey is produced and extracted. However, whenever the final date of availability falls on a nonworkday for county offices, the applicable final date shall be extended to include the next workday. Price support loans mature on demand but not later than the last day of the ninth calendar month following the month in which the loan application is approved. However, when the final date of maturity falls on a nonworkday for county offices the final date shall be extended to include the next workday.

4. Section 1434.7 is amended by adding paragraphs (c)(1) and (c)(2) to read as follows:

§ 1434.7 Eligible honey.

(c) * * *

(1) The 5-gallon containers must hold approximately 60 pounds of honey and shall be new, clean, sound, uncased, and free from appreciable dents and rust. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover and can opening must not be damaged in any way that will prevent a tight seal. Cans which are punctured or have been punctured and resealed by soldering will not be acceptable.

(2) Steel drums must be open-end type and filled no closer than 2 inches from the top of the drums. In addition, such drums must be new or must be used drums which have been reconditioned inside and outside. Drums must:

- (i) Be clean,
- (ii) Be treated inside and outside to prevent rusting,
- (iii) Be fitted with gaskets which provide a tight seal, and
- (iv) Have an inside coating suitable for honey storage.

5. Section 1434.13 is amended by revising paragraph (b) to read as follows:

§ 1434.13 Fees, charges and interest.

(b) Effective only for each of the 1991 through 1993 crops of honey, producers and producer-packers of honey as defined in paragraphs (5) and (9), respectively, of section 3 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602) shall remit to CCC a nonrefundable marketing assessment. Such marketing assessment shall be computed by multiplying an amount equal to one percent of the national average price support loan rate by the loan quantity of the crop. The assessment shall be collected from the

loan deficiency payments and loan proceeds for the crop of honey. However, producers exempt from the payment of the honey research and promotion fee as provided in paragraph (e) of this section are also exempt from this marketing assessment.

§ 1434.14 [Removed and Reserved]

6. Section 1434.14 is removed and reserved.

7. Section 1434.16 is amended by revising paragraph (a)(1) to read as follows:

§ 1436.16 Determination of quality.

(a)(1) Loans and loan deficiency payments on farm-stored honey will be made on the basis of the floral source and color of the honey as declared and certified by the producer on Form CCC-666 (Honey), Honey Loan Certification and Worksheet for loans, and Form CCC-666 LDP, Loan Deficiency Payment Application and Certification for loan deficiency payments, at the time the honey is either pledged as collateral for a loan or the loan deficiency payment application is made. The producer is also required to declare and certify on Form CCC-666 (Honey) or Form CCC-666 LDP the color and class (table or nontable) of the honey at the time the honey is pledged as collateral for a loan or at the time the loan deficiency payment application is made.

8. Section 1434.17 is amended by:

- A. Revising paragraphs (a)(3) and (a)(4), and
- B. Adding paragraphs (a)(5), (a)(6), and (a)(7) to read as follows:

§ 1434.17 Payment and forfeiture limitations.

(a) * * *

- (3) \$150,000 in the 1993 crop year;
- (4) \$125,000 in the 1994 crop year;
- (5) \$100,000 in the 1995 crop year;
- (6) \$75,000 in the 1996 crop year; and
- (7) \$50,000 in each of the 1997 and 1998 crop years.

9. Section 1434.23 is amended by:

- A. Revising paragraphs (a)(2), (a)(3), (b)(1), (b)(2), and (c),
- B. Revising introductory text to paragraph (d),
- C. Revising paragraph (d)(2),
- D. Revising paragraph (e), and
- E. Adding paragraph (k) to read as follows:

§ 1434.23 Incorrect certification, unauthorized removal and unauthorized disposition.

(a) * * *

(2) When signing Form CCC-666 LDP, Loan Deficiency Payment Application and Certification that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purposes.

(3) That violation of the terms and conditions of the Form CCC-677 or Form CCC-666 LDP, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity which is not actually in existence or for a quantity on which the producer is not eligible.

(b) * * *

(1) Incorrect certification is the certifying of a quantity of a commodity for the purpose of obtaining a commodity loan or a loan deficiency payment in excess of the quantity eligible for such loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments.

(2) Unauthorized removal is the movement of any farm-stored loan quantity from the storage structure in which the commodity was stored or structures which were designated when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written authorization from the county committee in accordance with § 1434.24, if the movement of loan collateral prevents CCC from obtaining the first lien on such collateral.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for the violations in accordance with paragraph (b) of this section. Accordingly, if the county committee determines that the producer has violated the terms and conditions of Form CCC-677 or Form CCC-666 LDP, as applicable, liquidated damages shall be assessed on the quantity of the commodity which is involved in the violation. If CCC determines the producer:

(1) Acted in good faith when the violation occurred, liquidated damages will be assessed by multiplying the quantity involved in the violation by:

(i) 10 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the first offense; or

(ii) 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate for the second offense, or

(2) Did not act in good faith with regard to the violation, or for cases other

than the first or second offense, liquidated damages will be assessed by multiplying the quantity involved in the violation by 25 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(d) For liquidated damages assessed in accordance with paragraph (c)(1) of this section, the county committee shall:

(2) If the producer fails to pay such amount within 30 days from the date of notification, call the applicable loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(e) For liquidated damages assessed in accordance with paragraph (c)(2) of this section, the county committee shall call the loan involved in the violation, or for loan deficiency payments, require repayment of the entire loan deficiency payment and charges plus interest.

(k) Any or all of the liquidated damages assessed in accordance with the provisions of paragraph (c) of this section may be waived as determined by CCC.

10. Section 1434.24 is amended by adding paragraph (f) to read as follows:

§ 1434.24 Release of the honey pledged as collateral for a loan.

(f) If the honey is moved on a nonworkday from storage without obtaining prior approval to move such honey, such removal shall constitute unauthorized removal or disposition, as applicable, of such honey unless the producer notifies the county office the next workday that such honey has been moved and such movement is approved by CCC.

11. Section 1434.25 is amended by revising paragraph (a)(1) to read as follows:

§ 1434.25 Liquidation of loans.

(a) * * *

(1) Repay the loan by payment of the amount of loan and any charges, plus interest, or with the exception of 1994 crop in the 1994 fiscal year, an amount, without interest, which is less than the loan level determined in accordance with 1434.24(e)(1)(ii), or,

12. Section 1434.26 is amended by revising paragraph (b)(3) to read as follows:

§ 1434.26 Loan deficiency payments.

(b) * * *

(3) File and request payment on Form CCC-666 LDP;

13. Section 1434.27 is amended by adding paragraph (c)(3) to read as follows:

§ 1434.27 Settlement.

* * * * *

(c) * * *

(3) If, during fiscal year 1994, CCC forecloses on 1994 crop honey pledged as collateral for a loan, in accordance with § 1434.28, the settlement value will be determined by CCC to be the proceeds received as a result of the sale of such honey.

* * * * *

Signed in Washington, DC on April 29, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94-11016 Filed 5-6-94; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-55-AD; Amendment 39-8904; AD 94-09-15]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that currently requires repetitive inspections of the aft bulkhead to detect cracks, and repair, if necessary. This amendment requires expansion of the inspection area and modification of the aft pressure bulkhead, which terminates the inspection requirements. This amendment is prompted by a tear down inspection conducted by the manufacturer, which revealed fatigue cracking in additional areas of the aft pressure bulkhead. The actions specified by this AD are intended to prevent potential loss of cabin pressurization.

DATES: Effective June 8, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 1994.

ADDRESSES: The service information referenced in this AD may be obtained

from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 84-08-03, Amendment 39-4848 (49 FR 16762, April 20, 1984), which is applicable to certain Airbus Model A300 series airplanes, was published in the *Federal Register* on September 3, 1993 (58 FR 46914). The action proposed to supersede AD 84-08-03 to require expansion of the inspection area to include areas 3 and 4 of the aft pressure bulkhead, and repair, if necessary; and modification of the aft pressure bulkhead, which will terminate the inspection requirements of this AD. This modification entails increasing the strength of the aft pressure bulkhead by attaching additional stiffeners. (This modification was optional in AD 84-08-03, Amendment 39-4848.)

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

All of the commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 738 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Required parts will cost approximately \$4,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$267,540, or \$44,590 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-4848 (49 FR

16762, April 20, 1984), and by adding a new airworthiness directive (AD), amendment 39-8904, to read as follows:

94-09-15 Airbus Industrie: Amendment 39-8904. Docket 93-NM-55-AD. Supersedes AD 84-08-03, Amendment 39-4848.

Applicability: Model A300 B2-1A, B2-1C, B2-203, B2K-3C, B4-2C, B4-103, and B4-203 series airplanes, on which Airbus Modification 2476/D1842 and Airbus Modification 2476/D1869 have not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of cabin pressurization, accomplish the following:

Note 1: Paragraph (a) of this AD restates the requirement for an initial and repetitive inspections contained in paragraph A. of AD 84-08-03. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 84-08-03, paragraph (a) of this AD requires that the next scheduled inspection be performed within the 6,000 flight cycles after the last inspection performed in accordance with paragraph A. of AD 84-08-03.

(a) Prior to the accumulation of 12,000 total flight cycles, or within 180 days after June 11, 1984 (the effective date of AD 84-08-03, Amendment 39-4848), whichever occurs later, inspect the aft bulkhead in areas 1 and 2 to detect fatigue cracking, in accordance with Airbus Service Bulletin A300-53-152, Revision 1, dated January 30, 1981; or Revision 4, dated March 13, 1992.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles.

(2) If any crack is detected as a result of any inspection required by paragraph (a) of this AD, prior to further flight, repair the crack, in accordance with Airbus Service Bulletin A300-53-152, Revision 1, dated January 30, 1981; or Revision 4, dated March 13, 1992. Subsequent to repair, repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles.

(b) Prior to the accumulation of 17,000 total flight cycles, or within 1 year after June 11, 1984 (the effective date of AD 84-08-03, Amendment 39-4848), whichever occurs later, accomplish Airbus Modification 2476/D1869, in accordance with Airbus Service Bulletin A300-53-122, Revision 2, dated January 30, 1981.

(c) Prior to the accumulation of 32,000 total flight cycles, or within 1 year after the

effective date of this AD, whichever occurs later, inspect the aft pressure bulkhead in areas 3 and 4 to detect fatigue cracking, in accordance with Airbus Service Bulletin A300-53-152, Revision 4, dated March 13, 1992.

(1) If no crack is detected, repeat the inspection at intervals not to exceed 9,000 flight cycles.

(2) If any crack is detected as a result of any inspection required by paragraph (b) of this AD, prior to further flight, repair the crack in accordance with Airbus Structural Repair Manual 51-41-30. Subsequent to repair, repeat the inspection thereafter at intervals not to exceed 9,000 flight cycles.

(d) Within 6 years after the effective date of this AD, accomplish Airbus Modification 2476/D1842, in accordance with Airbus Service Bulletin A300-53-121, Revision 3, dated January 30, 1981. Accomplishment of this modification constitutes terminating action for the inspections required by this AD.

(e) Accomplishment of Airbus Modification 2476/D1842, in accordance with Airbus Service Bulletin A300-53-121, Revision 3, dated January 30, 1981, constitutes terminating action for the inspection requirements of this AD.

(f) 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(h) The inspections and repairs shall be done in accordance with the following Airbus service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
A300-53-121, Revision 3, January 30, 1981	1-4	3	January 30, 1981.
	2, 7, 10-15, 17	2	December 30, 1980.
	6, 8, 9, 16, 18	1	September 30, 1980.
	5	Original	April 10, 1980.
A300-53-152, Revision 1, January 30, 1981	1-2	1	January 30, 1981.
	3-18	Original	October 24, 1980.
A300-53-152, revision 4, March 13, 1992	1-10, 18	4	March 13, 1992.
	11-17, 19-21	3	(These pages are not dated.)

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on June 8, 1994.

Issued in Renton, Washington, on April 26, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-10507 Filed 5-6-94; 8:45 am]

BILLING CODE 4910-13-U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-33998]

Delegation of Authority to Director of Division of Enforcement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to delegate authority to the Director of Division of Enforcement to institute subpoena enforcement proceedings in federal court to seek an order compelling the production of documents or an individual's appearance for testimony pursuant to a validly-issued Commission subpoena. This amendment will expedite the investigation process by enabling the staff to more quickly compel individuals or entities to comply with Commission subpoenas.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Emily P. Gordy, Assistant Director, Division of Enforcement, 942-4627, Stephen M. DeTore, Associate Chief Counsel, 942-4593 or Earle B. Wilson, Attorney, 942-4842.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced amendments to its rules governing delegation of authority to the Division of Enforcement ("Division").

The amendment to Rule 30-4¹ authorizes the Director of Division of

Enforcement ("Division Director") to institute subpoena enforcement proceedings in federal court to seek an order compelling individuals or entities to comply with Commission subpoenas. This delegation will expedite the investigation process by enabling the Division to more quickly seek to compel compliance with Commission subpoenas in cases where the entry of a court order is necessary. Notwithstanding this delegation of authority, in instances where potential subpoena enforcement action raises any close or controversial issues, the Division may consult with the Commission before the action is filed in federal court.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act,² that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date is also unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

* * * * *

2. Section 200.30-4 is amended by adding paragraph (a)(10) to read as follows:

§ 200.30-4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *
(10) To institute subpoena enforcement proceedings in federal court to seek an order compelling the production of documents or an individual's appearance for testimony pursuant to subpoenas issued pursuant to paragraph (a)(1) of this section in connection with investigations pursuant to section 19(b) of the Securities Act of

1933 (15 U.S.C. 77s(b)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 18(c) of the Public Utilities Holding Company Act of 1935 (15 U.S.C. 79r(c)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

* * * * *

Dated: May 3, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-11028 Filed 5-6-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 123

[T.D. 94-44]

RIN 1515-AB41

Small Vessel Reporting of Arrival in Miami District

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

ACTION: Final rule.

SUMMARY: This document removes a section of the Customs Regulations which sets forth special requirements for the report of arrival by operators of small vessels whose intended destination is at a point within the Miami, Florida, Customs District. As a result of this change, such small vessels will be subject to the reporting requirements applicable to vessels in general as prescribed by statute and elsewhere in the Customs Regulations. The change will confer a benefit on the public by doing away with procedural requirements which have proven to be cumbersome and inconvenient.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Greg Burns, Office of Inspection and Control (202-927-0381).

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1988, T.D. 88-71 was published in the Federal Register (53 FR 46081) to adopt, as a final rule, interim amendments to Part 4 of the Customs Regulations (19 CFR part 4) which included, *inter alia*, the addition of a new § 4.2a (19 CFR 4.2a) setting forth special requirements for the report of arrival by operators of small vessels whose intended destination is at a point within the Miami, Florida, Customs

¹ 17 CFR 200.30-4.

² 5 U.S.C. 553(b)(3)(A).

District. Section 4.2a was adopted as part of Customs continuing efforts to prevent smuggling, or other introduction contrary to law, of controlled substances and other merchandise and to enforce the currency reporting laws.

Under § 4.2a, an operator of a small vessel (defined as any vessel of less than 5 net tons, or any private pleasure vessel regardless of displacement) arriving from a foreign port or place, as defined therein, with an intended destination at a point within the limits of the Miami Customs District must immediately report the arrival, by use of a special clearly marked Customs telephone provided for that purpose at that location designated by Customs which is nearest to the vessel destination point, before proceeding to that destination point; the background portion of T.D. 88-71 listed 24 small vessel reporting stations designated by Customs but further stated that the District Director of Customs in Miami would retain authority to change the reporting locations. Section 4.2a also specifies the civil and criminal penalties that may be applied to the master or person in charge of a vessel who fails to report arrival as required under that section.

Experience with the operation of § 4.2a since publication of T.D. 88-71 has demonstrated that the reporting procedures set forth in the regulation are unnecessarily cumbersome and otherwise inconvenient for the general public. In this regard, Customs notes the following specific problems with the § 4.2a reporting requirements: (1) The number of private vessel arrivals in the Miami District exceeds the ability of the telephone reporting system to accommodate the calls in a timely manner, with the result that vessel operators sometimes must wait for more than an hour before getting through to the Customs office; and (2) private marinas, which constitute the majority of the designated reporting stations, have experienced economic hardship, particularly on busy weekends, because vessels trying to report occupy dock space to the exclusion of other private vessels wishing to do business at the marina. Customs believes that these problems are sufficiently significant as to warrant removal of § 4.2a.

Customs notes that removal of § 4.2a, which is primarily procedural in effect, will not have any substantive effect on the basic vessel reporting requirement and the enforcement thereof by Customs. In this regard it is noted that on December 21, 1993, Customs published in the *Federal Register* (58 FR 67312) T.D. 93-96 setting forth, as a

final rule effective on the date of publication, amendments to the Customs Regulations concerning reporting requirements for vessels, vehicles and individuals. Included in T.D. 93-96 were: (1) A revised § 4.2(a) which provides, *inter alia*, that, upon arrival of any vessel from a foreign port or place, the master of the vessel shall immediately report that arrival to the nearest Customs facility or other location designated by the district director; (2) transferral of the definition of "foreign port or place" from § 4.2a to a new § 4.2(b); and (3) a new § 4.3a setting forth a general recitation of the penalties for violation of vessel reporting and entry requirements. Accordingly, while removal of § 4.2a will eliminate the burden on the public occasioned by the special reporting procedures contained in that regulatory provision, the basic legal responsibilities of operators of small vessels will remain unchanged: Under § 4.2(a) they will still have to immediately report to Customs upon arrival from a foreign port or place, and they will remain liable for civil and criminal penalties for a failure to do so as outlined in § 4.3a.

In addition to the removal of § 4.2a, this document contains consequential cross-reference amendments to § 4.2(a) and to § 123.1(c) which was also revised by T.D. 93-96 as discussed above.

Inapplicability of Notice and Delayed Effective Date Requirements

Because these amendments confer benefits by reducing burdens and relieving restrictions on the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedures are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d) (1) and (3), a delayed effective date is not required.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Regulatory Flexibility Act

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Customs duties and inspection, Harbors, Imports, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Vessels, Yachts.

19 CFR Part 123

Canada, Customs duties and inspection, Imports, International boundaries, Mexico, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

For the reasons stated above, parts 4 and 123, Customs Regulations (19 CFR parts 4 and 123) are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific authority citation for § 4.2 are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.2 also issued under 19 U.S.C. 1441, 1486;

* * * * *

§ 4.2 [Amended]

2. In § 4.2, paragraph (a) is amended by removing from the second sentence the words "prescribed in § 4.2a of this part, or as".

§ 4.2a [Removed]

3. Section 4.2a is removed.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 is revised, and the specific authority citation for § 123.1 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1431, 1433, 1624;

Section 123.1 also issued under 19 U.S.C. 1459.

* * * * *

§ 123.1 [Amended]

2. In § 123.1, paragraph (c) is amended by removing the words "see §§ 4.2 and 4.2a" and adding, in their place, the words "see § 4.2".

Michael H. Lane,

Acting Commissioner of Customs.

Approved: April 15, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94-11004 Filed 5-6-94; 8:45 am]

BILLING CODE 4820-02-P

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 52

[OH-11-2-6106; OH-12-2-6107; FRL-4881-3]

**Approval and Promulgation of
Implementation Plans; Ohio**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is giving partial approval, partial disapproval, and partial limited approval/limited disapproval to specified portions of the requested revisions to the Ohio's ozone State Implementation Plan (SIP). The requested revisions consist of amendments to the Ohio Volatile Organic Compound (VOC) Rules. The revisions were submitted by the State of Ohio on June 9, 1988, and August 24, 1990, to satisfy part D requirements of the Clean Air Act as amended in 1990 (CAA). The USEPA has evaluated each revised rule and finds that a number of the regulations are fully approvable, and a number are not approvable, and is partially approving and partially disapproving these portions accordingly. The remainder of the regulations, while deficient in some respects, would nevertheless strengthen the existing SIP if federally approved. Therefore, the USEPA is giving limited approval to these remaining regulations in order to strengthen the SIP. Concurrently, the USEPA is giving limited disapproval to these rules because they still contain deficiencies that were required to be corrected by section 182(a)(2)(A) and, as a result, do not fully meet the part D requirements of the CAA.

EFFECTIVE DATE: This final rule becomes effective June 8, 1994.

ADDRESSES: Copies of the SIP revision request, public comments on the rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Bonnie Bush at (312) 353-6684, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this revision request to the Ohio ozone SIP is also available for inspection at the following address:

Office of Air and Radiation (OAR), Docket and Information Center, (Air

Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT: Bonnie Bush, Air Enforcement Branch, Regulation Development Section (AE-17J), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 353-6684.

SUPPLEMENTARY INFORMATION:
I. Summary of State Submittal

On June 9, 1988, the Ohio Environmental Protection Agency (OEPA) submitted volatile organic compound (VOC) regulations governing 11 sources not covered by United States Environmental Protection Agency (USEPA) Control Technique Guidelines (CTG) and the associated technical support for these regulations. On August 24, 1990, the OEPA submitted further revisions to the ozone portion of the Ohio State Implementation Plan (SIP), specifically, revisions to Ohio Administrative Code (OAC) Chapter 3745-21, "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards," including amendments to the following rules: OAC 3745-21-01, Definitions; OAC 3745-21-04, Attainment Dates and Compliance Time Schedules; OAC 3745-21-09, Control of Emissions of Volatile Organic Compounds from Stationary Sources; OAC 3745-21-10, Compliance Test Methods and Procedures; and OAC 3745-21-11, Reasonably Available Control Technology Studies for Ozone. On July 23, 1991, the OEPA sent a letter to Region V withdrawing OAC 3745-21-11 from the August 1990 SIP revision request. The USEPA evaluated the remaining revision requests from both the June 1988 and August 1990 submittals as the OEPA's effort to address the reasonably available control technology (RACT) "Fixup" requirements under section 182(a)(2)(A) of the Clean Air Act as amended in 1990 (CAA).

On September 23, 1993, the USEPA published a notice of proposed rulemaking in the *Federal Register* (58 FR 49458), proposing partial approval, partial disapproval, and partial limited approval/limited disapproval of the submittals. Public comments on this proposal were accepted through October 25, 1993. Three comments were received, from: (1) Navistar International Transportation Corporation, commenting on the USEPA's proposed action on OAC 3745-21-09(U); (2) Porter, Wright, Morris & Arthur, attorneys for Armco

Steel Company, commenting on the USEPA's proposed action on OAC 3745-21-09(OO); and (3) International Paper, commenting on the USEPA's proposed action on OAC 3745-21-09(II).

II. Public Comment/USEPA Response

The following evaluation summarizes each comment received, along with a summary of the USEPA's proposed action on the portion of the requested revisions that received the comment, and the USEPA's response to the comment. A more detailed discussion of the State submittal and the rationale for the USEPA's proposed actions based on the CAA and cited references, appears in USEPA technical support documents (TSD's) dated October 19, 1988, and March 3, 1993.

**A. Navistar International
Transportation Corporation**

Navistar commented on the USEPA's proposed action on OAC 3745-21-09(U), Ohio's regulation for surface coating of miscellaneous metal parts and products.

1. Proposed Action

The USEPA proposed disapproval of Rule -09(U) because of a number of deficiencies involving inconsistency with RACT as defined by the USEPA, lack of enforceability, and violation of the General Savings Clause of the Clean Air Act. The inconsistencies with RACT include an unjustified emission limit which is less stringent than RACT, an unjustified emission limit which is a relaxation from the approved ozone SIP, an inappropriate, unsupported applicability cutoff, and an inappropriate use of a five percent equivalency demonstration. The unsupported applicability cutoff requested in the revision is 10 gallons or less of coating applied per day. The USEPA has defined the RACT cutoff as 15 lbs or less VOC emitted per day. The enforceability deficiencies include use of vague language and language allowing director's discretion without requiring USEPA approval.

**2. Comments on Proposed Action and
USEPA Response**

a. Comment. Navistar supports the rule's applicability cutoff of 10 gallons or less of coating employed per day. The USEPA's RACT applicability cutoff of 15 lbs VOC emitted or less per day is economically unreasonable. Navistar's Springfield Assembly Plant in Clark County is using coatings with more than 3.5 lbs VOC per gallon, and if these lines were subject to the requirements of this rule, the cost of control would range

from \$70,616 to \$115,093 per ton of VOC removed. Navistar would have to apply for variances, which is wasteful of both time and resources.

b. USEPA Response. The cost of control quoted in the comment is higher than control costs usually associated with RACT, but the comment contains no documentation supporting these control cost figures. There is also no documentation submitted with this comment that demonstrates the unavailability of complying coatings or that this facility cannot use complying coatings as a means of VOC control. Most importantly, even if the commenter had submitted documentation of the quoted control costs, this would apply to Navistar alone; statewide relaxation of this applicability cutoff based on one facility would be unacceptable and insupportable. If Navistar has documented support for the cost control figures, the appropriate step for the company to take would be application for a site-specific SIP revision. If Navistar does not wish to apply for a SIP revision, the use of complying coatings is an acceptable alternative method of compliance.

B. Porter, Wright, Morris & Arthur

Porter, Wright, Morris & Arthur commented on OAC Rule 3745-21-09(OO), a non-CTG rule for the Armco Steel Company in Middletown, Ohio.

1. Proposed Action

The USEPA proposed concurrent limited approval (based on the SIP strengthening effect of the rule) and limited disapproval of Rule -09(OO) (based on lack of enforceability and inconsistency with RACT). The SIP strengthening effect of the rule stems from the fact that this rule provides some regulation for this source where no federally enforceable regulation exists now. The enforceability deficiency stems from a lack of recordkeeping requirements for the facility, and the rule contains an unjustified VOC content limit for a coating operation which is inconsistent with RACT recommendations. The rule also lacks consideration of all non-CTG VOC sources at the plant, and rule development for VOC emissions from volatile organic liquid (VOL) storage tanks has been omitted.

2. Comments on Proposed Action and USEPA Response

a. Comment 1. Armco objects to limited approval of rules submitted in 1988 and 1990. The emission limit of 0.3 lb VOC per gallon of rolling oil excluding water in Rule -09(OO)(1) is

an error. Armco perfected an appeal of Ohio's adoption of this rule to the Ohio Environmental Board of Review. Ohio subsequently adopted a new limit for rolling oil, which is contained in the OEPA's June 7, 1993, submittal to the USEPA. The USEPA should address only the new limit.

b. USEPA Response. The USEPA has had discussions with the OEPA about the emission limit for rolling oil and understands that the 0.3 lb VOC per gallon limit was issued in error. The USEPA acknowledges that this error has been addressed in Ohio's VOC rules submittal of June 7, 1993; nonetheless, under section 110(k) of the CAA, the USEPA is required to take action on the June 1988 and August 1990 submittals. The USEPA agrees that it is inappropriate to approve into the SIP a limit which is unreasonable and in error. The USEPA also believes that the SIP strengthening effect of the remainder of this rule is relatively insignificant. Therefore, the USEPA is disapproving Rule -09(OO), rather than granting limited approval/limited disapproval. The VOC rules package submitted on June 7, 1993, including a revised rule for Armco Steel, is under review, and will be addressed in a subsequent separate rulemaking action.

c. Comment 2. The recordkeeping inadequacies cited in the proposed action have been corrected with Ohio's June 7, 1993, submittal.

d. USEPA Response. This rulemaking action addresses only the June 1988 and August 1990 submittals, which lack the necessary recordkeeping and reporting requirements for Armco Steel. Under section 110(k) of the CAA, the USEPA is required to take action on the June 1988 and August 1990 submittals. The VOC rule package submitted on June 7, 1993, including a revised rule for Armco Steel, is under review, and will be addressed in a subsequent separate rulemaking action.

e. Comment 3. Armco believes that the emission limit for anti-galling material of 6.4 lb VOC per gallon, cited as deficient in the March 3, 1993, USEPA TSD supporting the proposed action, constitutes RACT as of the time of Ohio's most recent rulemaking action. Armco is converting to a much lower VOC material, and this could form the basis for a lower VOC limit, which should resolve any continuing concern with this particular rule.

f. USEPA Response. As discussed in the notice of proposed rulemaking, the State did not submit any demonstration that a lower VOC content material was not available. The comment also lacks a demonstration that a lower VOC content material was unavailable at the time the

rule was developed. However, the comment states that such a material is available now; therefore, the 6.4 lbs VOC per gallon emission limit clearly does not constitute RACT for this source. As discussed above in the responses to Comments 1 and 2, this rulemaking action addresses the June 1988 and August 1990 submittals only. The most recent rule revision is under review, and will be addressed in a subsequent separate rulemaking.

g. Comment 4. The USEPA's position that VOL storage tank emissions must be addressed is inconsistent with a January 16, 1992, letter from the USEPA to the OEPA which states that rule development is unnecessary.

h. USEPA Response. The January 16, 1992, letter states, "**** Ohio is not required to develop a rule for this category at this time." Any major source not covered by a CTG is subject to non-CTG RACT, as required by sections 172(c), 182(a)(2)(A), and 182(b)(2) of the CAA. The USEPA's March 1993 TSD and the notice of proposed rulemaking indicate that the State is required to develop a rule for VOL storage. However, lack of such rule development was not cited as the sole deficiency for Rule 3745-21-09(OO) and was not the basis for disapproval. The appropriate action on Rule -09(OO) remains disapproval based on lack of recordkeeping requirements and a VOC content limit which is inconsistent with RACT (see USEPA Responses to Comments 1, 2, and 3).

C. International Paper

International Paper commented on OAC Rule 3745-21-09(II), a non-CTG rule for the International Paper Company facility in Springdale, Ohio.

1. Proposed Action

The USEPA proposed concurrent limited approval/limited disapproval of this rule. The SIP strengthening effect of the rule stems from the fact that this rule provides some regulation for this source where no federally enforceable regulation exists now. The proposal of limited disapproval is based on deficiencies which include lack of enforceability due to the absence of recordkeeping requirements for the facility and a VOC content limit for fountain solution which is inconsistent with RACT. The State submittal contains no demonstration that a lower VOC content material is unavailable.

2. Comments on Proposed Action and USEPA Response

a. Comment. International Paper supports the OEPA's position as set forth in the June 7, 1993, submittal. The

June 1988 and August 1990 version of International Paper's rule "specified limitations which were erroneously developed and derived, and which have been corrected in subsequent rulemakings." The USEPA should act only on the June 7, 1993, package.

b. *USEPA Response.* International Paper did not specify which limitations they believe are in error, nor did they include in the comments any information substantiating the error. International Paper had opportunity to comment on this rule prior to its adoption by the State during Ohio's public comment period. However, the record of comments submitted into the Public Hearing Record included in Ohio's June 1988 submittal contains no comments from International Paper. Under section 110(k) of the CAA, the USEPA is required to take action on the June 1988 and August 1990 submittals. The VOC rule package submitted on June 7, 1993, including a revised rule for International Paper, is under review, and will be addressed in a subsequent separate rulemaking action.

III. Rulemaking Action

The comments were found to warrant one change from proposed to final action on this SIP revision request. The USEPA has reconsidered its position on OAC Rule 3745-21-09(OO); rather than giving concurrent limited approval/limited disapproval, the USEPA is disapproving Rule -09(OO).

In summary, the USEPA is disapproving the following rules: OAC 3745-21-01 (D)(6), (D)(8); OAC 3745-21-09 (I), (L), (N), (O), (Q), (R), (U), (W), (Z), (DD), (EE), (OO); OAC 3745-21-10 (A), (C), (E), (O). The USEPA is giving concurrent limited approval/limited disapproval to the following rules: OAC 3745-21-01 (D)(45); OAC 3745-21-09 (A), (B), (C) through (H), (J), (K), (S), (T), (X), (Y), (FF) through (NN), (PP); OAC 3745-21-10 (B). The USEPA is approving the following rules: OAC 3745-21-01 (A), (B), (C), remainder of (D), (E) through (S); OAC 3745-21-04 (A), (B), (C); OAC 3745-21-09 (M), (P), (V), (BB), (CC); OAC 3745-21-10 (D), (F), (G), (I) through (N), (P).

Under section 179(a)(2), if the Administrator disapproves a required submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, one of the sanctions set forth in section 179(b) will apply, as selected by the Administrator, unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides for two types of sanctions: highway funding and offsets. The 18

month period referred to in section 179(a) will begin to run for those provisions that the USEPA is disapproving (in full or in a limited manner) as of the date the USEPA publishes this final action. Moreover, this disapproval triggers the Federal Implementation Plan (FIP) requirement under section 110(c). The sanctions and FIP clocks are not started for Wood and Medina Counties by this final action because the State was not required to submit RACT fix-up rules for these areas.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted this regulatory action from Executive Order 12866 review.

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but

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

The USEPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, the USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that the approved portions of this action conform with those requirements irrespective of the fact that the submittal preceded the date of enactment. The Agency has determined that other portions of this action do not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

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 8, 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 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, Hydrocarbons, Incorporation by reference, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 22, 1994.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(96) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(96) On June 9, 1988, and August 24, 1990, the Ohio Environmental Protection Agency (OEPA) submitted revisions to the State Implementation Plan for ozone. The revisions consist of new non-Control Technique Guideline volatile organic compound (VOC) rules and corrections to existing VOC rules.

(i) Incorporation by reference.

(A) OEPA Ohio Administrative Code (OAC) Rule 3745-21-01, Definitions, Paragraphs (A), (B), (C), (D)(1) through (5), (D)(7), (D)(9) through (52), (E) through (S); effective August 22, 1990.

(B) OEPA OAC Rule 3745-21-04, Attainment Dates and Compliance Time Schedules, Paragraphs (A), (B), (C); effective August 22, 1990.

(C) OEPA OAC Rule 3745-21-09, Control of Emissions of Volatile Organic Compounds from Stationary Sources, Paragraphs (A), (B), (C) through (H), (J), (K), (M), (P), (S), (T), (V), (X), (Y), (BB), (CC), (FF) through (NN), (PP), effective August 22, 1990.

(D) OEPA OAC Rule 3745-21-10, Compliance Test Methods and Procedures, Paragraphs (B), (D), (F), (G), (I) through (N), (P); effective August 22, 1990.

[FR Doc. 94-11072 Filed 5-6-94; 8:45 am]

BILLING CODE 6580-50-F

40 CFR Part 185

[OPP-300238B; FRL-4780-8]

RIN 2070-AB78

Pesticides; Stay of Effective Date for Order Revoking Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Stay of effective date.

SUMMARY: EPA is staying the effective date of a final rule revoking the food additive regulation for dicofol (1,1-bis[*p*-chlorophenyl]-2,2,2-trichloroethanol) in or on dried tea, which was published in the Federal Register of March 9, 1994. EPA received petitions to stay the May 9, 1994 effective date for the stated final rule. As allowed in the March 9, 1994 final rule, EPA is staying the effective date indefinitely in order to review the petition and determine whether to grant the petition for a stay and if so, for what length of time. EPA is allowing 15 days for public comment on the petition requesting a stay of the effective date, which is available in the OPP public docket and is summarized in this document. Any decision associated with this action will be published in the Federal Register.

DATES: This stay is effective May 9, 1994. Any affected person may submit comments on the stay request summarized in this document on or before May 24, 1994.

ADDRESSES: Comments, identified by the document control number, [OPP-300238B], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Niloufar Nazmi, Special Review Branch (7508W), Special Review and Reregistration Division, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, Telephone: (703) 308-8208.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 9, 1994 (59 FR 10993), EPA issued a final rule revoking the food additive regulation for dicofol on dried tea (hereinafter referred to as the "final rule") based on the determination that this food additive regulation is inconsistent with the Delaney Clause in section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). In the final rule, EPA set an expiration date of May 9, 1994.

Any person adversely affected was given a 30-day opportunity to: (1) file written objections to the order, (2) file a written request for an evidentiary hearing on the objection, and (3) file a petition for a stay of the effective date. EPA stated that if any petition for a stay were received, the Agency would stay the May 9, 1994 effective date of the final rule for such time as is required to review and make a determination on the stay petition. If the stay petition is denied, the final rule will be effective 30 days after date of publication of the petition denial in the Federal Register.

Makhteshim-Agan of North America, Inc., and Rohm and Haas Co. (together "the Dicofol Task Force") filed an objection to the final rule, a request for an evidentiary hearing on the factual issues raised in the objections, and a stay of the final rule pending final resolution of the issues. In addition, the National Agricultural Chemical Association (NACA) submitted a separate objection.

Outlined below are summaries of the petition to stay the effective date of the March 9, 1994 final rule and other objections which EPA has received. Full copies of the stay requests or objections may be viewed or ordered from the OPP Docket under the document control number, OPP-300238B]. The OPP Docket is located in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, telephone (703)-305-5805.

The basis for the stay petition is that the Dicofol Task Force will allegedly suffer irreparable injury if a stay is not granted. They contend they have satisfied the four criteria outlined in the final rule for granting a stay.

First, according to the Task Force, not only will there be impacts from the loss of dicofol on tea, other uses of dicofol will suffer because products containing dicofol will be tarnished by being labeled "carcinogenic."

Second, the Task Force asserts that their case is not frivolous and is being pursued in good faith since EPA's decision to revoke the food additive regulation for dicofol on dried tea is insupportable on factual and legal grounds.

They cite the following reasons. The Task Force argues that EPA has failed to apply the appropriate standard for determining whether dicofol "induces cancer" within the meaning of the Delaney Clause because EPA has not followed the Food and Drug Administration's rigorous standard in determining whether a substance induces cancer. In addition, the Task Force asserts that a proper evaluation of all the relevant biological and statistical

information would lead to the conclusion that the weight-of-the-evidence does not support a finding that dicofol induces cancer in man or animals. The Dicofol Task Force further argues that, even assuming that dicofol induces cancer in animals, the food additive regulation "poses essentially no risk, or at most a negligible risk," to consumers of tea beverages.

Third, the Task Force contends that the growers and the general public will suffer irreparable injury from the impact resulting from this revocation and the labeling of dicofol as a pesticide that "induces cancer." They argue that since there are not many alternative pesticides available, the revocation will result in the use of less effective, environmentally unsafe, and more costly products.

Finally, the Task Force argues that because EPA has stated in public notices that the use of dicofol poses no more than a negligible risk, a delay resulting from a stay is not outweighed by any public health or other public interest.

NACA's objections state that NACA and its members, which include the Task Force, are adversely affected by EPA's interpretation of the Delaney Clause because EPA's interpretation is not consistent with the language of FFDCA or with the current state of scientific knowledge of carcinogenicity. Furthermore, NACA argues that it is affected by other procedural deficiencies in the adoption of the Final Rule, specifically, EPA's failure to conduct a weight-of-the-evidence evaluation on the issue of whether dicofol "induces cancer" in animals based on tests "which are appropriate for the evaluation of the safety of food additives."

NACA also requests that EPA withdraw the Final Rule and provide an adequate opportunity for the submission of comments, and conduct a proper weight of the evidence evaluation to determine whether dicofol triggers the "induce cancer" standard of the Delaney Clause. NACA urges the EPA to apply a standard to determining when a pesticide is found to "induce cancer" that is in accord with current data evaluation standards, current scientific knowledge of carcinogenicity, and FDA precedent."

Any comments regarding the requests for stay of the May 9, 1994 effective date for the food additive regulation for dicofol on dried tea, identified by the document control number OPP-300238B, may be forwarded within 15 days of publication of this Federal Register to the Hearing Clerk at the address marked in the section

"Addresses" section above in this document."

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 21 U.S.C. 346a and 348.

Dated: May 4, 1994.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

PART 185—[AMENDED]

Therefore, the effective date of May 9, 1994, of the final rule published at page 10993 in the Federal Register of March 9, 1994, removing § 185.410 *Bis(p-chlorophenyl)-2,2,2-trichloroethanol* is stayed indefinitely.

[FR Doc. 94-11232 Filed 5-5-94; 3:41 pm]

BILLING CODE 6560-50-F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1842, and 1852

[NFS Case 933705]

NASA FAR Supplement; Contractor Cost Reporting

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

ACTION: Interim rule.

SUMMARY: Until now, the NFS has had only a prescription for use of the cost reporting (NASA Form 533 series) clauses, with no policy guidance. Also, the prescriptions' dollar thresholds for use of the clauses are stated only by reference to a NASA Management Instruction (NMI), thus requiring the reader to find and use the NMI in order to determine when the clauses are required. This change provides the thresholds and adds some guidance regarding the contracting officer's duties, allowable changes, and deviation approval authority. There is also some minor clarification in the wording of the clauses, and the coverage is relocated to a more appropriate subpart.

DATES: This interim rule is effective May 9, 1994. NASA will accept written comments until July 8, 1994.

ADDRESSES: Comments regarding this rule should be addressed as follows: National Aeronautics and Space

Administration, Procurement Policy Division (Code HP), Washington, DC 20546. Please cite HP number 933705 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Frances Sullivan, (202) 358-0488, or William T. Childs, (202) 358-0454.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783-3238. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Background

This case was opened based on General Accounting Office Report AFMD-93-3, October 29, 1992, NASA's Financial Management Operations, which included a finding that procurement officials did not always follow agency directives to include contractor reporting requirements in solicitations and contracts.

Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule does not significantly change existing policies or procedures. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected NASA FAR Supplement subparts will be considered in accordance with 5 U.S.C. 601. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NASA FAR Supplement do not impose any new recordkeeping or information collection requirements, or new collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The information collection represented by the NASA Forms 533 has previously been approved under OMB Control No. 2700-0003, through 12/21/96.

List of Subjects in 48 CFR Parts 1804, 1842, and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1804, 1842, and 1852 are amended as follows.

1. The authority citation for 48 CFR parts 1804, 1842, and 1852 continues to read as follows:

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

PART 1804—ADMINISTRATIVE MATTERS

2. Sections 1804.675 and 1804.675-1 are removed and reserved.

PART 1842—CONTRACT ADMINISTRATION

3. Subpart 1842.72 is added to read as follows:

Subpart 1842.72—NASA Contractor Financial Management Reporting

Sec.

1842.7201 General.

1842.7202 Contract clauses.

Subpart 1842.72—NASA Contractor Financial Management Reporting**1842.7201 General.**

(a) *Contracting officer responsibilities.* (1) Successful cost management will only result from a team approach among the procurement, financial/resources management, and project management communities. Contracting Officers should play a primary role in managing cost performance. They must ensure contracts require cost reporting consistent with both policy requirements and project needs. Contracting Officers should monitor contractor cost reports on a regular basis to ensure cost data reported is accurate and timely. Contracting Officers should independently review cost report data.

Adverse trends or discrepancies discovered in cost reports should be pursued through discussions with financial and project team members.

(2) Whenever cost performance threatens contract performance, Contracting Officers shall require corrective action plans from the contractors. When contracts are modified to accommodate contractor-responsible cost performance problems, consideration is required from the contractor; e.g., reduced fee earning potential.

(b) *Reporting requirements.* (1) Reporting utilizing NASA Contractor Financial Management Reports, the NASA Form 533 series, is required (see NMI 9501.1, NASA Contractor Financial Management Reporting System) on cost-type, price redetermination, and fixed-price incentive contracts when the following dollar, period of performance, and scope criteria are met:

Criteria	Report format			
	Contract value/scope	Period of performance	533M	533Q
\$500K up to \$1M/all	1 year or more	Required	Optional	Optional.
\$1,000,000 and greater/all	Less than 1 year	Required	Optional	Optional.
\$1,000,000 and greater/all	1 year or more	Required	Required	Optional.
\$25,000,000 and greater/supply contracts	1 year or more	Required	Required	Required.

(2) Where it is probable that a contract will ultimately meet the criteria through change orders, supplemental agreements, etc., the reporting requirement must be implemented in the contract as initially awarded.

(3) Performance analysis reporting using the 533P format is mandatory for supply contracts over \$25,000,000. Although non-supply contracts over \$25,000,000 require only 533M and 533Q reporting, Performance Measurement System reports can be an effective management tool and should be routinely considered as a possible requirement for non-supply contracts over \$25,000,000.

(c) *Substitution of contractor reports.* With the Contracting Officer's approval, the contractor's internal automated printout reports may be substituted for the 533 reporting formats only if the substitute reports contain all the data elements that would be provided by the corresponding 533's. If substitution is made for the 533P report, schedule data must be reported as of same date and in the same reporting categories as the financial data. The Contracting Officer shall coordinate any proposed substitute with the installation financial management office.

(d) *Contract requirements.* (1) The reporting requirements, including a description of the reporting categories, shall be detailed in the procurement request, and the reports shall be required by inclusion of the appropriate clause or clauses prescribed in 1842.7202. The contract schedule must also indicate the addressees and number of copies. The reporting categories specified shall be coordinated with the Installation Financial Management Office to ensure that data required for agency cost accounting will be provided by the reports. Reporting due dates shall be in accordance with the provisions of NHB 9501.2, Procedures for Contractor Reporting of Correlated Cost and Performance Data. No changes to these submission requirements shall be negotiated except in unusual circumstances and no due dates shall be later than the date by which the Installation Financial Management Office requires the reports for entering cost data in the accounting system.

(2) The contractor shall be required to submit an "Initial Report," in complete detail, time-phased for the expected life of the contract, within 10 days after authorization to proceed has been granted, unless otherwise specified by the Contracting Officer. Regular

monthly and quarterly reporting will begin within 30 days of contract award.

(e) *Deviations.* Deviations from the financial management reporting provisions of the clauses prescribed herein will require approval in accordance with subpart 1801.4. The Associate Administrator for Procurement will obtain concurrences of the Director, Financial Management Division, and the Associate Administrator of the cognizant Headquarters Program Office.

1842.7202 Contract clauses.

(a) The clause at 1852.242-73, NASA Contractor Financial Management Reporting, shall be used when any of the NASA Form 533 series of reports are required from the contractor.

(b) The clause at 1852.242-74, NASA Contractor Financial Management Reporting (Performance Analysis Report), shall be used in conjunction with the clause at 1852.242-73 when the Monthly Contractor Financial Management Performance Analysis Report (533P) is required from the contractor.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.204-71 and 1852.204-72 [Removed]

3. Sections 1852.204-71 and 1852.204-72 are removed.

4. Sections 1852.242-73 and 1852.242-74 are added to read as follows:

1852.242-73 NASA Contractor Financial Management Reporting.

As prescribed in 1842.7202(a), insert the following clause in contracts that require submission of any of the NASA Form 533 series of reports.

NASA Contractor Financial Management Reporting (April 1994)

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2) and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall be correlated with technical and schedule reporting, shall be set forth in the contract Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information reported to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the contract Schedule or as designated in writing by the Contracting Officer. Upon completion and acceptance by NASA of all contract Schedule line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only.

(d) The Contractor shall require first-tier subcontracts that meet the established reporting criteria set forth in 1842.7201(b)(1) to report cost data using the NASA Form 533 reports. Copies of subcontractor Form 533 reports shall be submitted along with the Contractor's Form 533 reports in the manner set forth in the contract Schedule or as designated in writing by the Contracting Officer.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

1852.242-74 NASA Contractor Financial Management Reporting (Performance Analysis Report).

As prescribed in 1842.7202(b), insert the following clause, in addition to the clause at 1852.242-73, in contracts that require submission of NASA Form 533P.

NASA Contractor Financial Management Reporting (Performance Analysis Report) (April 1994)

Monthly reporting of contract performance shall be accomplished on the NASA Monthly Contractor Financial Management Performance Analysis Report (NASA Form 533P) in accordance with the instructions in Procedures for Contractor Reporting of Correlated Cost and Performance Data (NHB 9501.2) and on the reverse side of the form, as supplemented in the Schedule of this contract.

(End of clause)

[FR Doc. 94-11017 Filed 5-6-94; 8:45 am]

BILLING CODE 7510-01-P

48 CFR Part 1843

[NFS Case 933704]

NASA FAR Supplement; Unfinalized Contract Action

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

ACTION: Interim rule.

SUMMARY: NASA contracting activities are instructed that contract modifications and task orders generally must be fully negotiated and priced ("definitized") prior to issuance. If circumstances require issuance prior to definitization, actions with an estimated cost over \$1,000,000 must be approved by the head of the contracting activity, except that for actions under Space Station contracts, the threshold is \$10,000,000 and the approving authority is the Headquarters official responsible for the Space Station program. These approval levels cannot be delegated. Unfinalized actions should be issued as bilateral agreements, should contain a cost ceiling or not-to-exceed price, and should be definitized within 180 days. Certain exceptions apply.

DATES: This interim rule is effective May 9, 1994. NASA will accept written comments until July 8, 1994.

ADDRESSES: Comments regarding this rule should be addressed as follows: National Aeronautics and Space Administration, Procurement Policy Division (Code HP), Washington, DC

20546. Please cite HP number 933704 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Roger Wilson, (202) 358-0486, or William T. Childs, (202) 358-0454.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783-3238. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Background

Many NASA contracts involve research and development where discoveries made during performance dictate a change in the work, and it is more efficient to issue an unpriced change than to allow the work to proceed in a direction that is obviously no longer desirable. However, the too-frequent use of unfinalized contract actions has contributed to a perception that the agency lacks discipline in the management of changes and the control of contract costs. Without full definitization, there is a risk of misunderstanding as to what effort is planned and what the programmatic and cost impacts are.

Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule is limited to a change in internal agency procedures. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected NASA FAR Supplement subparts will be considered in accordance with 5 U.S.C. 601. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NASA FAR Supplement do not impose any new recordkeeping or information collection requirements, or new collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1843

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1843 is amended as follows.

1. The authority citation for 48 CFR part 1843 continues to read as follows:

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

PART 1843—CONTRACT MODIFICATIONS

2. Subpart 1843.1 is added as follows:

Subpart 1843.1—General

Sec.

- 1843.101 Definitions.
- 1843.102 Policy.
- 1843.103 Procedures.
- 1843.104 Exceptions.
- 1843.105 Definitization.

Subpart 1843.1—General**1843.101 Definitions.**

Undefinitized contract action (UCA) means a unilateral or bilateral contract modification or work/task order in which the final price or estimated cost and fee have not been negotiated and mutually agreed to by NASA and the contractor. (Issuance of letter contracts and modifications to letter contracts are governed by subpart 1816.6.)

1843.102 Policy.

Undefinitized contract actions shall be executed by contracting officers on an exception basis and shall be limited to the Agency's minimum urgent requirements. The contract file for all UCAs shall be documented to justify issuance and shall include a Government estimate for the changed requirements.

1843.103 Procedures.

(a) Issuance of undefinitized contract actions with a Government estimated cost or price over \$1,000,000 must be approved in writing by the Center Director, except that Space Station undefinitized contract actions with a Government estimate over \$10,000,000 must be approved in writing by the Deputy Associate Administrator for Space Flight (Space Station). These approval authorities are not delegable. Issuance of undefinitized contract

actions with a Government estimated cost or price less than or equal to \$1,000,000 shall also be minimized but may be approved on an exception basis in accordance with Center procedures.

(b) (1) Undefinitized contract actions exceeding \$1,000,000 approved by the Center Director shall be issued as bilateral agreements duly executed by an authorized representative of the contractor. These bilateral agreements shall set forth a ceiling price or "not to exceed" estimated cost figure for the changed contractual requirements. For fixed price contracts the negotiated price for the changed contract requirements shall not exceed the established ceiling price. In the case of cost type contracts any costs eventually negotiated for the changed requirements in excess of the "not to exceed" estimated cost figure shall be non-fee bearing. The ceiling price or "not to exceed" estimated cost figures shall be separately identified in the UCA instrument from any increases in the estimated cost or Limitation of Government Liability.

(2) The Center Director or Deputy Associate Administrator for Space Flight (Space Station) may waive the ceiling price or "not to exceed" estimated cost figure and bilateral agreement requirements prior to UCA issuance on the basis of urgency. This waiver authority is not delegable. Any waivers shall be documented in the contract file.

(c) The changed contractual requirements set forth in the UCA shall be clearly defined and shall be limited to the minimum effort required to satisfy urgent program requirements while a cost proposal is prepared, analyzed and negotiated.

(d) For undefinitized contract actions with a Government estimate greater than \$1,000,000 and not excepted under subpart 1843.104, a 180 day funding profile shall be obtained from the contractor and reviewed by the cognizant NASA personnel prior to execution of the undefinitized contract action.

(e) Undefinitized contract actions with a Government estimated cost or price greater than \$1,000,000 shall include a requirement that the change shall be separately accounted for by the contractor to the degree necessary to

provide the Contracting Officer visibility into actual costs incurred pending definitization. The Contracting Officer may waive this requirement for individual actions if there is a documented finding that such accounting procedures would not be cost effective. Any such waiver shall not affect existing NASA Form 533 or other financial reporting requirements set forth in the contract.

1843.104 Exceptions.

(a) Exceptions to the requirement for Center Director or Deputy Associate Administrator for Space Flight (Space Station) approval for issuance of undefinitized contract actions as specified in 1843.103(a) are—

(1) Modifications to facilities contracts;

(2) Modifications to construction contracts using Construction of Facilities funding;

(3) Urgent modifications resulting from Shuttle manifest changes or that involve immediate issues of safety or damage/loss of property;

(4) Modifications to decrease the contract value; or

(5) Modifications to letter contracts.

(b) The contract file for any of the above modifications shall be documented to justify UCA issuance in addition to citing the appropriate exception to Center Director or Deputy Associate Administrator for Space Flight (Space Station) approval.

1843.105 Definitization.

(a) Undefinitized contract actions should be sufficiently complete and detailed as to enable the contractor to begin immediate preparation of a cost proposal for the changed requirement. The NASA goal is to definitize UCAs within 180 days from date of issuance. This goal in no way compromises the Agency's continuing requirement for sound cost analysis, arms-length negotiations, and fair and reasonable settlements.

(b) Whenever possible, pre-change study efforts or engineering change proposals (ECPs) shall be utilized to negotiate and definitize changes prior to issuance.

[FR Doc. 94-11018 Filed 5-6-94; 8:45 am]

BILLING CODE 7510-01-P

Proposed Rules

Federal Register

Vol. 59, No. 88

Monday, May 9, 1994

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

DEPARTMENT OF AGRICULTURE

Rural Development Administration

7 CFR Part 4285

FIN 0537-AA00

Federal-State Research on Cooperatives Program

AGENCY: Rural Development Administration, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking establishes within the Rural Development Administration (RDA) a matching fund cooperative research agreement program to State Departments of Agriculture, State Agricultural Experiment Stations, and other related State Agencies to conduct marketing research related to cooperatives. This rule establishes the procedures to be followed annually in the solicitation of cooperative agreement proposals, the evaluation of such proposals, and the award of the cooperative agreements under this program. These rules are necessary to award the funds appropriated to Agricultural Marketing Service in fiscal year 1994 for research on cooperatives under the Federal-States Marketing Improvement Program. The intended effect is to encourage more research at state levels that will enhance the well-being of agricultural cooperatives and their members.

DATES: Comments are invited from interested individuals and organizations and must be received on or before June 8, 1994.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Cooperative Services, Rural Development Administration, USDA, Ag Box 3252, Washington, DC 20250-3252, Phone: 202-690-0368.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Paperwork Reduction Act

The information collection or recordkeeping requirements contained in this regulation will be submitted for approval by the Office of Management and Budget (OMB) under the provision of 44 U.S.C. chapter 35 and will be assigned an OMB control number in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Public reporting burden for this collection of information is estimated to vary from 10 minutes to 36 hours per response with an average of 3.48 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. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, RDA, Ag Box 0743, Washington, DC 20250.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact Statement

This proposed regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Intergovernmental Review

This program is considered a part of "Technical Assistance To Cooperatives" as listed as No. 10.350 in the "Catalog of Federal Domestic Assistance". For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of RDA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

Discussion of Proposed Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. While Executive Order 12866 recommends at least a 60-day comment period for most proposed rules, the agency has determined that 30 days is sufficient in this case. The 30-day period meets Administrative Procedures Act requirements. The FY 1994 appropriations for this program also must be obligated before September 30, 1994; therefore, a 30-day comment period is desired to allow research proposals to be developed in time for cooperative agreements to be awarded within the fiscal year. Furthermore, the procedures set out in the proposed rule are similar to other USDA cooperative agreement procedures and, therefore, are unlikely to elicit adverse comments.

Only \$435,000 was appropriated for this program for FY 1994 and may not be appropriated in subsequent years. However, it is the Agency's expectation that funds will be appropriated for this program either as a separate item or as part of the general appropriations for the Agency in future years. Therefore, this proposed rule establishes the guidelines for administering the program for future years.

The Federal-State Research on Cooperatives Program (FSROC) is authorized under section 204(b) of the Agricultural Marketing Act of 1946 (7

U.S.C. 1623 (b)). The Agricultural Appropriations Act for 1994 specifically appropriated funds to Agricultural Marketing Service (AMS), USDA to be used as a matching fund program designed to provide assistance to State Departments of Agriculture and State Agricultural Experiment Stations in conducting research related to agricultural cooperatives. In order to use the cooperative expertise available only in RDA, these funds, appropriated as part of the Federal-State Marketing Improvement Program (FSMIP), have been transferred to the Rural Development Administration, Cooperative Services (RDA-CS) to administer. Previous funding for a similar program in Agricultural Cooperative Service which has become RDA-CS was done on a noncompetitive basis with Land-Grant Universities. It was the apparent intent of Congress to have funds available for research on cooperatives on the same basis as funds used in AMS's FSMIP. Since FSMIP has been an effective program that has evolved since its authorization in 1946, it is apparent that the procedures developed at AMS should be closely mirrored in this new program with a cooperative content.

Under the proposed FSROC, RDA will solicit State Departments of Agriculture, State bureaus and departments of markets, State Agricultural Experiment Stations, and other appropriate State agencies to submit research proposals to be funded on a competitive basis. The solicitation will include broad areas of research that the Agency wishes to emphasize so that the limited funds may more likely result in research being done in the areas determined by the RDA staff to be high priority. However, these areas of emphasis (§ 4285.58(b)(1)(v)) do not restrict the submission of proposed projects that will be considered if they meet the purposes of agricultural marketing as given in the Agricultural Marketing Act of 1946 (7 U.S.C. 1623).

Section 204 (b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)) restricts the funds for this program to be used on a cooperative basis with State Departments of Agriculture, State bureaus and departments of markets, State Agricultural Experiment Stations, and other appropriate State agencies. Since these funds are specifically for research related to agricultural marketing, it is the Agency's interpretation that the other appropriate State agencies are primarily 1862 and 1890 Land Grant Colleges, since they conduct research related to agricultural marketing. USDA's OGC will make a determination if a particular college or

university legally qualifies as a State agency. Other State agencies would be considered appropriate if they have the ability and reason to conduct research related to cooperatives and to agricultural marketing.

In addition to the statutes' requirement that the funds go to a State agency, RDA is proposing limiting it to those Agencies that have financial, legal, administrative and actual capacity to conduct the research. The necessity of fiscal responsibility requires RDA to only provide cooperative funds to those Agencies that also have the fiscal and administrative ability to assure that the funds are expended according to the purposes of the Agricultural Marketing Act of 1946.

Further, the Agricultural Marketing Act of 1946 requires that no funds shall be allotted for any fiscal year to any State agency in excess of the amount which such State agency makes available out of its own funds for such research. RDA has interpreted this to mean the use of cooperative agreements with the States agency providing at least half of the funds for conducting the research on cooperatives. In addition, RDA is limiting the funds to use by Agencies that can legally and administratively conduct business with cooperative agreements since it has determined that cooperative agreements are the appropriate instrument to use for these funds.

The research proposals will be evaluated by a panel of Agency technical experts to determine the proposals that are likely to result in the most needed research that can be done with the limited funds appropriated. The evaluation panel will make recommendations to the Assistant Administrator for Cooperative Services, RDA who will have the final decision on awarding the cooperative agreements. The panel of Agency technical experts are necessary to evaluate what is expected to be a variety of very technical proposals dealing with agricultural marketing research and cooperatives. An outside peer review panel is not being proposed because the Agency has the expertise to evaluate such proposals, the outside panel would be extremely costly relative to the small amount of total funds available, and the need to evaluate the proposals in a timely manner.

To assure a consistency in the evaluation process the proposed rule establishes a set of evaluation criteria (§ 4285.70) to assure the research is consistent with the intent of the program and is worth the funds that are to be spent on the project. The heaviest weight of the objective criteria is placed

on assuring that the research is based on significant problems to assure that funds are not expended on insignificant items nor in other fiscally irresponsible ways. The second highest weight of the criteria is placed on the adequacy, soundness, and appropriateness of the proposed approach to the research in order that research is conducted that will be meaningful. The relatively low weight put on the criteria of the feasibility and probability of success of solving the problem was done because nearly all projects are expected to be feasible and it is extremely difficult to determine the likely success or failure of projects, but at the same time the Agency's technical experience can be used to predict approaches or problems that are not likely to give the desired results. The relatively heavy weight placed on the personnel that are conducting the research was done to assure that the best equipped and qualified to conduct the research are selected as required by the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)). Although cost is a significant factor, no specific weight is assigned to the cost since cost must be measured relative to the complexity of the problem, the likely outcome of the project, the significance of the problem identified, and relative to other proposals and the total appropriated funds.

Upon recommendations of the technical panel, the Assistant Administrator for Cooperative Services will determine which cooperative agreements to fund. The Assistant Administrator for Cooperative Services will also determine the reasonable length of time in which the project should be completed. To assure timely research results the agreements will be limited to three years from the time of the award. However, if justified, that time can be renewed, but the total time would be limited to 4 fiscal years so as to allow orderly closing of the financial records of the Federal Government.

The accounting for the funds awarded for the cooperative agreement will be subject to the normal rules for cooperative agreements within USDA as given in part 3016 of this title. The proposed application format is used to assure that sufficient information is obtained to complete a cooperative agreement as given in part 3016 of this title. In addition, the application format is similar to that used by Cooperative State Research Service, USDA for their competitive grants programs as given in Part 3200 of this title, since that format appears to be very effective in helping assure projects that will be carried out in a fiscally responsible manner.

The definition of agricultural products given below is repeated from the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)). The cooperative agreement instrument is as defined in the Implementation of Federal Grant and Cooperative Agreement Act of 1977 (Pub.L. 95-224). The proposed classification of the cooperative agreements as new, renewal, or supplemental are used to facilitate administering the agreements. The authorized and prohibited uses of cooperative agreements funds given below (§ 4285.25 and § 4285.46) are to clarify the uses of funds as given in the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)) and follow the guidelines as used by the AMS FSMIP. Because research requires doing things that may not be known before the agreement is signed, the proposed rule allows for changes in the cooperative agreement. To assure the cooperative agreement stays in line with the intent of the program, however, all substantive changes are required to be approved by the Assistant Administrator for Cooperative Services.

List of Subjects in 7 CFR Part 4285

Agricultural commodities, Agricultural research, Cooperatives, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR Ch. XLII is proposed to be amended by adding part 4285 to read as follows:

PART 4285—COOPERATIVE AGREEMENTS

Subpart A—Federal-State Research on Cooperatives Program

Sec.

- 4285.1 Objective.
- 4285.2 Cooperative agreement purposes.
- 4285.3 Definitions.
- 4285.4–4285.23 [Reserved]
- 4285.24 Eligibility.
- 4285.25 Authorized use of cooperative agreement funds.
- 4285.26–4285.45 [Reserved]
- 4285.46 Prohibited use of cooperative agreement funds.
- 4285.47 Limitations.
- 4285.48–4285.57 [Reserved]
- 4285.58 How to apply for cooperative agreement funds.
- 4285.59–4285.68 [Reserved]
- 4285.69 Evaluation and disposition of applications.
- 4285.70 Evaluation criteria.
- 4285.71–4285.80 [Reserved]
- 4285.81 Cooperative agreement awards.
- 4285.82 Use of funds; changes.
- 4285.83–4285.92 [Reserved]
- 4285.93 Other Federal statutes and regulations that apply.
- 4285.94 Other conditions.
- 4285.95–4285.100 [Reserved]

Authority: 7 U.S.C. 1623, 2201; Pub. L. 103-111, 107 Stat. 1046; Pub. L. 103-211, 108 Stat. 3; USDA Secretary's Memorandum 1020-39, dated September 30, 1993.

Subpart A—Federal-State Research on Cooperatives Program

§ 4285.1 Objective.

This subpart sets forth the policies and procedures and delegates authority for providing Federal-State Research on Cooperatives cooperative agreement funds to finance programs of research on cooperatives as authorized under Section 204 (b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623 (b)). The primary purpose of this matching fund program, via cooperative agreements, is to encourage State Departments of Agriculture and State Agricultural Experiment Stations in conducting research related to agricultural cooperatives.

§ 4285.2 Cooperative agreement purposes.

Rural Development Administration (RDA) may enter into a cooperative agreement with a State agency to provide funds to the State agency to:

- (a) Conduct marketing research related to agricultural cooperatives.
- (b) Assist other organizations in conducting marketing research related to agricultural cooperatives.

§ 4285.3 Definitions.

As used in this part:
Agreement period. The total period of time approved by the Assistant Administrator for Cooperative Services for conducting the proposed project as outlined in an approved application. The time period is normally no more than 3 years, renewable for cause not to exceed a total of 4 fiscal years.

Agricultural products. Agricultural products include agricultural, horticultural, viticultural, and dairy products, livestock and poultry, bees, forest products, fish and shellfish, and any products thereof, including processed or manufactured products, and any and all products raised or produced on farms and any processed or manufactured product thereof.

Assistant Administrator for Cooperative Services. The Assistant Administrator for Cooperative Services, Rural Development Administration, USDA or any authorized delegate.

Awarding official. The Assistant Administrator for Cooperative Services or authorized delegate.

Cooperative Agreement. A legal instrument reflecting a relationship between the United States Government and a State where:

- (1) The principal purpose of the relationship is the transfer of money,

property, services, or anything of value to the State agency to carry out research related to cooperatives; and

(2) Substantial involvement is anticipated between RDA, acting for the Federal Government, and the State or other recipient during performance of the research in the agreement.

Cooperator. The State agency designated in the cooperative agreement award document as the responsible legal entity to whom a cooperative agreement is awarded under this part.

Department. The U.S. Department of Agriculture.

Methodology. The research approach to be followed to carry out the project.

Principal investigator. A single individual who is responsible for the scientific and technical direction of the project, as designated by the cooperator in the cooperative agreement application and approved by the Assistant Administrator for Cooperative Services.

Project. The particular activity within the scope of one or more of the research program areas identified in the annual program solicitation that is supported by a cooperative agreement under this part.

State agencies. State agencies include, among others, State Agricultural Experiment Stations and State Departments of Agriculture in the 50 States, territories or possessions of the United States and other appropriate State agencies. Final determination of whether certain 1890 or 1862 Land Grant institutions qualify as state agencies will be determined on a case-by-case basis by the Office of the General Counsel (OGC), USDA.

§§ 4285.4–4285.23 [Reserved]

§ 4285.24 Eligibility.

To enter into a cooperative agreement for these funds, the applicant must:

- (a) Be a State Agency as defined in § 4285.3;
- (b) Have the financial, legal, administrative, and actual capacity to assume and carry out the responsibilities imposed by the Agreement. To meet the requirement of actual capacity it must either:
 - (1) Have necessary background and experience with proven ability to perform responsibly in the field of economic, business management, or other needed research area; or
 - (2) Have the necessary administrative and supervisory controls in place to assure an agreed upon contracting organization has the proven ability to perform responsibly in the field of economic, business management, or other needed research area;

(c) Legally obligate itself to administer cooperative agreement funds, provide adequate accounting of the expenditure of such funds, and comply with the cooperative agreement;

(d) Provide at least 50 percent of the funds necessary to conduct the research from non-federal funds; and

(e) Agree to conduct proposed research related to cooperatives and agricultural marketing.

§ 4285.25 Authorized use of cooperative agreement funds.

Funds received for research under cooperative agreements in this program shall only be used for:

(a) Payment of salaries and necessary employee benefits of personnel as agreed upon in the Cooperative Agreement. Included are salaries and benefits of State employees assigned full-time to one or more projects, or the percent of the salaries and benefits related to project work for State employees assigned part-time to research on one or more projects. Salaries and benefits include basic salary, other compensation such as holiday pay, sick or annual leave, and personnel benefits (quarters allowance, payments to other funds such as employees' life insurance, health benefits, retirement, Federal Insurance Contributions Act (FICA), accident compensation, and similar payments). For any of the benefit items when the State usually pays the employer share, Federal funds may be used to pay the proportionate share of such employer contributions.

(b) Payment of necessary and reasonable office expenses such as office rental, office utilities, and office equipment rental. The purchase of office equipment is permissible when the cooperator determines it to be more economical than renting. However, as a general rule, these types of expenses would be classified as indirect costs in multiple funded organizations and would not be an allowable expense. Planned purchases of equipment costing more than \$200 per unit must be approved by RDA. Equipment purchased becomes State property pursuant to the cooperative agreement.

(c) Payment of necessary and reasonable costs of printing publications of research project results. However, all such publications should show the RDA as cooperator in the project and bear the following statement: "State funds for this project (publication) were matched with Federal funds under the Federal-State Research on Cooperatives Program of the U.S. Department of Agriculture, Rural Development Administration, Cooperative Services, as provided by the

Agricultural Marketing Act of 1946 and (appropriate) fiscal year appropriations."

(d) Purchase of office supplies (such as paper, pens, pencils, and trade magazines) and postage needed for project activities.

(e) Payment of necessary and reasonable travel expenses.

§§ 4285.26-4285.45 [Reserved]

§ 4285.46 Prohibited use of cooperative agreement funds.

(a) The Agricultural Marketing Act prohibits the use of Federal funds to pay for newspaper or periodical space and radio and television time, either directly to the media or indirectly through an advertising agency or other firm. County and State fair exhibits, as well as commodity months and weeks, are also excluded as the research on cooperatives program activities.

(b) Federal funds cannot be used to purchase products or samples of products to give away to the public.

(c) Federal program funds cannot be used to purchase:

(1) Promotional pieces such as point-of-sale materials, promotional kits, billboard space and signs, streamers, automobile stickers, table tents, and placemats; or

(2) Promotion items of a personal gift nature.

(d) Cooperative agreement funds cannot be used to conduct general publicity or information programs designed to build the image of the State's agriculture or of a particular State Department of Agriculture or Agricultural Experiment Station.

(e) Project funds cannot be used to pay for the salary and travel of employees of cooperatives, trade associations, commodity groups, and other industry organizations, or of State personnel while engaged in managing market orders, cooperatives, or other group endeavors.

(f) Commissioners, Directors, and Secretaries of State Departments of Agriculture, Agricultural Experiment Stations, and other State agencies cannot charge their salaries and travel to project funds, with the exception of travel to workshops or conferences devoted to the Federal-State Research On Cooperatives Program.

(g) Funds made available for this program shall not be subject to reduction for indirect costs or for tuition remission.

§ 4285.47 Limitations.

The amount of funds available for the cooperative agreements under this program is limited to the amount appropriated for the fiscal year.

§§ 4285.48-4285.57 [Reserved]

§ 4285.58 How to apply for cooperative agreement funds.

(a) A program solicitation will be prepared and announced through publications such as the Federal Register, professional trade journals, agency or program handbooks, and/or any other appropriate means, as early as practicable each fiscal year in which funds are appropriated for the program.

(b) The annual program solicitation will contain information sufficient to enable all eligible applicants to prepare proposals including:

(1) Desired research topics. The FY-94 solicitation will encourage studies:

(i) To improve the efficiency and effectiveness of marketing of agricultural cooperatives;

(ii) To measure the impact of rural cooperatives on the local economies;

(iii) That help identify opportunities to develop cooperatives for new or alternative market uses of agricultural products;

(iv) That help identify ways to develop agricultural marketing cooperatives; and,

(v) Addressing other cooperative marketing objectives;

(2) Explanation of eligibility requirements as outlined in § 4285.24;

(3) The notice of availability of application forms and instructions for submission of applications;

(4) The notice of deadline dates for postmarking proposal packages;

(c) *Executive Order 12372*. The cooperative agreements for research related to cooperatives are subject to the provisions of Executive Order 12372 (3 CFR, 1982 Comp., p. 197), which allows States to review all its applications for funds and/or actions under specific Federal programs. Most of the States have designated a "Single Point of Contact" within the State for the listed programs and have established a procedure to handle applications. If the State has adopted this procedure, Section 16 of the Standard Form 424, "Application for Federal Assistance," needs to be completed when applying for the cooperative agreement funds under this part.

(d) *Format for proposals*. Unless otherwise indicated by the Department in the annual program solicitation, the following information must be submitted for the preparation of proposals under this program:

(1) Form SF-424, "Application for Federal Assistance."

(2) Form SF-424A, "Budget Information - Non-Construction Programs."

(3) Form SF-424B, "Assurances - Non-Construction Programs."

(4) **Statement of Work.** The application must include a narrative statement describing the nature of the proposed research. The Statement of Work must include at least the following:

(i) **Title of the Project.** The title of the proposal must be brief, yet represent the major thrust of the project.

(ii) **Project Leaders.** List the name(s) of the principal investigator(s). Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) **Need for the Project.** A concisely worded rationale behind the proposed research must be presented. The need for the proposed research must be clearly related to marketing and to the needs of agricultural cooperatives.

(iv) **Objectives of the project.** The specific description of the overall project goal(s) and supporting objectives must be presented.

(v) **Procedures for conducting the research.** The hypotheses or questions being asked and the methodology being applied to the proposed project must be described. A description of any subcontracting arrangements that will be used for conducting the research must be included. A tentative schedule for conducting major steps involved in the investigation must also be included.

(vi) **The expected output of the project.** A description of how the results of the research will be disseminated should be presented. Responsibility for publishing any research reports or other types of output should also be identified.

(5) **Collaborative arrangements.** If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (*i.e.*, letters of intent) should be provided to assure reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(6) **Personnel support.** To assist reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following must be included:

(i) An estimate of the time commitments necessary;

(ii) **Curriculum Vitae.** The curriculum vitae should be limited to a presentation of academic and research credentials, *e.g.*, educational, employment and professional history, and honors and awards. Unless pertinent to the project, it should not include meetings attended, seminars given, or personal data such as birth date, marital status, or community activities; and

(iii) **Publication List(s).** A chronological list of all publications in refereed journals during the past five years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Also list other non-refereed technical publications that have relevance to the proposed project. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

§§ 4285.59–4285.68 [Reserved]

§ 4285.69 Evaluation and disposition of applications.

(a) **Evaluation.** (1) All proposals received from eligible applicants and postmarked in accordance with deadlines established in the annual program solicitation shall be evaluated by the Assistant Administrator for Cooperative Services through an RDA staff panel. The Assistant Administrator for Cooperative Services will select the evaluation panel from staff determined to be highly qualified in the subject matter areas that were emphasized in the current year's solicitation and from those with no potential conflict of interest with the applicants.

(2) Prior to technical examination, a preliminary review will be made for responsiveness to the program solicitation (*e.g.*, relationship of proposal to research topic(s) listed in solicitation). Proposals that do not fall within the guidelines as stated in the program solicitation will be eliminated from competition and will be returned to the applicant.

(3) Proposals will be ranked based on evaluation criteria established in § 4285.70 and financial support levels will be recommended to the Assistant Administrator for Cooperative Services by the panel within the limitation of the total funding available in the fiscal year. The purpose of these evaluations is to provide information upon which the Assistant Administrator for Cooperative Services may make informed judgements in selecting proposals. Such recommendations are advisory only and

are not binding on the awarding official of RDA. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) **Disposition.** (1) On the basis of the Assistant Administrator for Cooperative Services's evaluation of an application in accordance with paragraph (a) of this section, the Assistant Administrator for Cooperative Services will either:

(i) Approve support using currently available funds;

(ii) Defer support due to lack of funds or need for further evaluation; or

(iii) Disapprove support for the proposed project in whole or in part.

(2) With respect to any approved project, the Assistant Administrator for Cooperative Services will determine the project period during which the project may be funded.

(3) Any deferral or disapproval of an application will not preclude its reconsideration or reapplication during subsequent fiscal years. However, applicants must reapply if reconsideration is desired.

(4) The Assistant Administrator for Cooperative Services will not make a cooperative agreement funding award, based upon an application covered by this part, unless the application has been properly reviewed in accordance with the provisions of this part and unless said reviewers have made recommendations concerning the scientific merit and relevance to the program of such application.

§ 4285.70 Evaluation criteria.

(a) In evaluating the proposal, the RDA staff review panel and the awarding official will take into account the degree to which the proposal demonstrates the following:

(1) Focus on a practical solution to a significant problem involving one or more of the following on a cooperative business basis: the preparation for market, processing, packaging, handling, storing, transporting, distributing, or marketing of agricultural products. (35%)

(2) Adequacy, soundness, and appropriateness of the proposed approach to solve the identified problem. (30%)

(3) Feasibility and probability of success of project solving the problem. (10%)

(4) Qualifications, experience in related work, competence, and availability of project personnel to direct and carry out the project. (25%)

(b) In addition, the cost relative to the expected research results will be considered in determining the awarding of the agreements.

§§ 4285.71-4285.80 [Reserved]

§ 4285.81 Cooperative agreement awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make awards for cooperative agreements to those applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Assistant Administrator for Cooperative Services as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved and funds are appropriated for such purpose, unless otherwise permitted by law. All funds awarded under this part shall be expended solely in accordance with the methods identified in approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's "Uniform Federal Assistance Regulations" (part 3015 of this title) and the Department's "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (part 3016 of this title).

(b) *Cooperative agreement award document and notice of award—(1) Cooperative agreement award document.*

The award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Assistant Administrator for Cooperative Services has competitively awarded funds under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying cooperative agreement number assigned by RDA;

(v) Project period, specifying the amount of time the Agency intends to support the project without requiring recompitation for funds;

(vi) Total amount of Agency financial assistance approved by the Assistant Administrator for Cooperative Services during the project period;

(vii) Legal authority(ies) under which the cooperative agreement is awarded;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the cooperative agreement award; and

(ix) Other information or provisions deemed necessary by RDA to carry out its agreement activities or to accomplish the purpose of a particular cooperative agreement.

(2) *Notice of award.* The notice of award of funds for the cooperative agreement will be in the form of a letter providing pertinent instructions or information to the cooperator.

(c) *Types of cooperative agreement instruments.* The types of cooperative agreements shall be as follows:

(1) *New agreement.* This is an agreement instrument by which RDA agrees to support a specified level of effort for a project not supported previously under this program. This type of agreement is approved on the basis of an RDA Staff evaluation review and recommendation.

(2) *Renewal agreement.* This is an agreement instrument by which RDA agrees to provide additional funding for a project beyond the period approved in an original or amended agreement, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it must include a summary of progress to date from the previous agreement period. A renewal agreement shall be based upon new application, de novo review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Supplemental agreement.* This is an instrument by which RDA agrees to provide small amounts of additional funding under a new or renewal cooperative agreement as specified in paragraphs (c)(1) and (c)(2) of this section and may involve a short-term (usually one year or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period for the project exceed the statutory limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature will not require additional review.

(d) *Obligation of the Federal Government.* The approval of any application or the award of any funds for a cooperative agreement shall not commit nor obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

(e) *Obligation of the cooperator.* The cooperator shall be responsible for:

(1) Making a brief quarterly progress reports at the end of each December, March, June and September to the FSROC program staff for the duration of the research project;

(2) Presenting a final administrative report on the project at the end of the research project; and

(3) Preparing and publishing a report(s) of research findings for dissemination to interested producers, cooperatives, and agencies. Include recognition to financial and other assistance received from the FSROC program.

§ 4285.82 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The cooperator may not, in whole or in part, delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of cooperative agreement funds.

(b) *Change in project plans.* (1) The permissible changes by the cooperator, principal investigator(s), or other key project personnel in the approved cooperative agreement shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the cooperator and/or the principal investigator(s) is uncertain whether a particular change complies with this provision, the question must be referred to the Assistant Administrator for Cooperative Services for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes. Normally, no requests for such changes outside the scope of the original approved project will be approved.

(3) Changes in approved project leadership or the replacement or realignment of other key project personnel shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the cooperator and approved in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, prior to effecting such changes, except as may be allowed in the terms and conditions of a cooperative agreement award.

(c) *Changes in project period.* The project period determined pursuant to § 4285.81(b) may be extended by the Assistant Administrator for Cooperative Services without additional financial support, for such additional period(s) as the Assistant Administrator for

Cooperative Services determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall not exceed four (4) years and shall be further conditioned upon prior request by the cooperator and approval in writing by the Assistant Administrator for Cooperative Services, or authorized delegate, except as may be allowed in the terms and conditions of a cooperative agreement award.

(d) *Changes in approved budget.* The terms and conditions of a cooperative agreement will prescribe circumstances under which written Agency approval must be requested and obtained prior to instituting changes in an approved budget.

§§ 4285.83-4285.92 [Reserved]

§ 4285.93 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to cooperative agreement proposals considered for review or to agreements awarded under this part. These include but are not limited to:

(a) 7 CFR Part 1, Subpart A—USDA implementation of the Freedom of Information Act;

(b) 7 CFR Part 3—USDA implementation of OMB Circular A-129 regarding debt collection;

(c) 7 CFR Part 15, Subpart A—USDA implementation of title VI of the Civil Rights Act of 1964 in order to assure nondiscrimination;

(d) 7 CFR Part 1473—National Agricultural, Research, Extension, and Teaching Policy Act Amendments of 1981 if the project involves a college or university;

(e) 7 CFR Part 3015—USDA Uniform Federal Assistance Regulations implementing OMB directives (i.e., Circular Nos. A-110, A-21, and A-122) and incorporating provisions of 31 U.S.C. 6301-6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224, 92 Stat. 3), as well as general policy requirements applicable to recipients of Departmental financial assistance;

(f) 7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(g) 7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(h) 7 CFR Part 3018—USDA implementation of New Restrictions on

Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

(i) 7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(j) 29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B prohibiting discrimination based upon physical or mental handicap in Federally assisted programs;

(k) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 4285.94 Other conditions.

Post-award requirements. Upon awarding the cooperative agreement, the post-award requirements of subparts C and D of part 3016 of this title apply.

§§ 4285.95-4285.100 [Reserved]

Dated: March 28, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94-10883 Filed 5-6-94; 8:45 am]

BILLING CODE 3410-07-W

Animal and Plant Health Inspection Service

9 CFR Parts 50, 77, and 92

[Docket No. 93-014-1]

Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to require that certain steers and spayed heifers imported into the United States from Mexico be sent either to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and 60-day post-entry tuberculin test. This action appears necessary to prevent infected steers and spayed heifers from Mexico from spreading tuberculosis to U.S. cattle.

We are also proposing to deny claims for indemnity for Mexican-origin steers or spayed heifers that test positive to the 60-day post-entry tuberculin test, and to deny claims for indemnity for cattle that were exposed to such animals. This action would discourage importation of Mexican-origin steers and spayed heifers of questionable disease status.

DATES: Consideration will be given only to comments received on or before July 8, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-014-1. Comments received may be inspected 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 comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8715.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (referred to below as tuberculosis or TB) is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Tuberculosis in affected animals causes weight loss, general debilitation, and sometimes death.

In accordance with regulations in 9 CFR parts 50, 77, and 92 (referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) administers programs designed to control and eradicate tuberculosis in cattle and bison.

The regulations in 9 CFR part 50 provide for payment of Federal indemnity to owners of certain cattle or bison destroyed because of tuberculosis.

The regulations in 9 CFR part 77 regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States. Cattle or bison that are exposed, reactors, suspects, or from herds containing suspects, are eligible to move interstate directly to slaughter, under specified

conditions. In addition, exposed cattle on the island of Molokai, Hawaii, are eligible to be moved interstate to a quarantined feedlot.

The regulations in 9 CFR part 92 prohibit or restrict the importation of certain animals, including cattle from Mexico, to prevent the introduction into the United States of communicable diseases of livestock. Section 92.427(c)(1) requires, among other things, that steers imported into the United States from Mexico: (1) Have been tuberculin-tested, with negative results, either within 60 days before the date the steers are offered for entry into the United States or at the port of entry; or (2) originated in a herd declared tuberculosis-accredited by the Government of Mexico, provided that they were moved directly to the U.S. port of entry from their herd of origin and were not commingled with cattle from any herd not so accredited; or (3) are consigned from the port of entry to a recognized slaughtering establishment, in accordance with § 92.429.

The regulations are intended to prevent the importation of TB-infected cattle into the United States. Despite the regulations, however, more than half of all cattle with tuberculous lesions detected at slaughter in the United States during the past decade have been traced back to Mexico. During the 18 months ending March 31, 1993, for example, 1,090 TB-infected cattle were detected at slaughter in the United States. Of those, 713 were identified as Mexican-origin steers.

Therefore, to safeguard the health of domestic cattle, we propose to amend § 92.427(c) to require certain steers imported into the United States from Mexico be sent either to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and 60-day post-entry tuberculin test. We believe this action would minimize the exposure of domestic cattle to TB-infected cattle imported from Mexico. We propose to add to 9 CFR part 77 a new § 77.6, providing the specific requirements for a quarantined feedlot, quarantined pasture, and for post-entry quarantine and TB-testing at a quarantined holding facility.

In addition, we propose to add to the regulations specific provisions for spayed heifers imported into the United States from Mexico. Until recently, U.S. importers expressed little interest in Mexican-origin spayed heifers. Conditions have changed, however, and importers have requested that we set forth specific provisions for the importation of Mexican-origin spayed heifers.

Lacking reproductive organs, neutered females and neutered males are indistinguishable in terms of susceptibility to TB and other diseases. This means that, for regulatory purposes, spayed heifers and steers are identical, and that the provisions applicable to steers apply equally to spayed heifers. Therefore, under the proposed regulations, spayed heifers would be regulated under the same terms as steers. The specific provisions for steers from Mexico, at § 92.427(c), would be amended to include spayed heifers from Mexico.

In addition, we propose to hold importers accountable for the health of the animals they import by amending § 50.14(f) to categorically deny indemnity claims for Mexican-origin steers and spayed heifers that test positive to the 60-day post-entry tuberculin test, and for any cattle exposed to such reactors. This change would increase the financial stake that importers have in the quality of the TB-testing on which they base their purchase and importation decisions. That is, it would provide importers with an incentive to purchase only steers and spayed heifers that present little or no risk of TB-infection, encouraging a more active interest in herds of origin and test histories. We expect that this heightened accountability would sharply reduce the number of TB-infected animals imported into the United States from Mexico.

Restricted Status Cattle

As stated above, we propose to require that certain steers and spayed heifers imported into the United States from Mexico be sent either to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and 60-day post-entry tuberculin test. The affected steers and spayed heifers would be known as "restricted status cattle," and would include all steers and spayed heifers except the following:

- Those that are consigned from the port of entry to a recognized slaughtering establishment, in accordance with § 92.429;
- Those that have been tuberculin tested, with negative results for the entire lot, at the port of entry (a definition of *lot* would be added to § 77.1 to read as follows: "All the members of a group of cattle in a single consignment.");
- Those that originated in a herd declared to be tuberculosis-accredited by the Government of Mexico, and were moved directly to the port of entry from their herd of origin without

commingling with cattle from a non-accredited herd; and

- Those that originated in a herd in a state participating in the Mexican National Tuberculosis Eradication Program, and that (as part of the Mexican National Tuberculosis Eradication Program) were tuberculin tested at a ranch of origin monitored by the animal health service of the National Government of Mexico or at a testing pen under the full-time supervision of the animal health service of the National Government of Mexico. This latter provision would afford the animal health service of the National Government of Mexico greater control over testing and post-test movement. A definition of "restricted status cattle" would be added to § 77.1. We would also add a definition of "herd of origin (originated in a herd)" to § 77.1 to read as follows: "Any herd in which cattle are born and remain until movement or any herd in which cattle remain for 120 days immediately prior to movement. As used in this part, "originated in a herd" shall have the same meaning as set forth here for "herd of origin." We would require that the cattle remain in a herd for 120 days to reflect the testing criteria for herd additions found in APHIS's *Uniform Methods and Rules—Bovine Tuberculosis Eradication*, which is incorporated by reference in part 77.

Under the current regulations, steers and spayed heifers that are consigned from the port of entry to a recognized slaughtering establishment have no opportunity to spread TB to animals not consigned to slaughter, and pose no disease risk to domestic livestock. Therefore, we are proposing no new restrictions on the post-entry movement of these animals.

The other steers and spayed heifers excluded from the proposed category of restricted status cattle would either have tested negative to TB at the U.S. port of entry or would have originated in a TB-accredited herd or in a herd in a state participating in the Mexican National Tuberculosis Eradication Program. (The states participating in the Mexican National Tuberculosis Eradication Program would be listed in the proposed definition of Mexican National Tuberculosis Eradication Program that would be added to § 77.1.) We are confident in the reliability of the port-of-entry testing that would be conducted by APHIS, on the basis of which any test-positive or exposed animals would be refused entry into the United States. We are equally confident in the stringent standards of the National Tuberculosis Eradication Program recently established by the Government of Mexico. The

Government of Mexico has allocated \$92 million to be spent on this comprehensive disease-prevention and eradication program during the next 5 years, with a goal of TB eradication in Mexico by 1998. As its proposed definition in § 77.1 states, Mexico's National Tuberculosis Eradication Program incorporates methods and rules for TB testing, traceback, and eradication that have been determined by the Administrator to be equivalent to those set forth in APHIS's Uniform Methods and Rules—Bovine Tuberculosis Eradication, which is incorporated by reference in part 77. The Mexican TB-eradication program is equivalent to the program adopted by a State establishing or maintaining modified accredited state status in the United States under the Bovine Tuberculosis Eradication program. As in the United States, participation is on a state-by-state basis. The full funding of the Mexican National Tuberculosis Eradication Program redoubles our confidence in the national standards the Government of Mexico uses to determine that a herd qualifies for TB-accredited status, and that any steers or spayed heifers from a TB-accredited herd would have had no opportunity to commingle with potentially TB-infected animals. The rigorous monitoring for tuberculosis undergone by steers and spayed heifers in the three categories discussed in this paragraph justifies their exclusion from restricted status cattle.

Restricted status cattle would be subject to the restrictions set forth in proposed § 77.6. A cross-reference to this effect would be added to the regulations at proposed § 92.427(c)(5). Specifically, restricted status cattle could only be moved from the port of entry to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and 60-day post-entry tuberculin test. Quarantined pastures, quarantined feedlots, and quarantined holding facilities could be located only in States that are not classified as accredited-free. This provision would safeguard accredited-free States from the possibility that a potentially TB-infected steer or spayed heifer from a quarantined pasture, quarantined feedlot, or quarantined holding facility could, as a result of an accident or other misfortune, jeopardize the TB-free status of any accredited-free State. Restricted status cattle being moved from the port of entry to a quarantined pasture or quarantined feedlot for finish feeding, or to a quarantined holding facility for quarantine and 60-day post-entry

tuberculin test, would be required to be moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, or one of their designees. This proposed requirement would ensure that restricted status cattle have no contact with other animals while in transit from one facility to another. Further, restricted status cattle would have to be accompanied by a permit any time they are being moved, except when being moved directly to slaughter. (The definition of *permit* in § 77.1 would be expanded to provide both for issuance of permits at the port of entry, and for identification of restricted status cattle, and to provide for movement only in accordance with applicable State and Federal regulations.)

Quarantined Pastures, Quarantined Feedlots, Quarantined Holding Facilities

We have developed the proposed requirements for quarantined pastures, quarantined feedlots, and quarantined holding facilities (proposed §§ 77.6(b), (c), and (d)) on the basis of State and Federal experience with other disease-control programs. That experience has shown the proposed provisions for the three kinds of premises to be effective in preventing livestock of unknown disease status from spreading disease to other livestock.

Definitions of quarantined feedlot, quarantined pasture, and quarantined holding facility would be added to § 77.1. "Quarantined feedlot" would be defined as a confined drylot for finish feeding of restricted status cattle, with no facilities for pasturing or grazing, that has been approved for this purpose by the State representative and an APHIS representative, and that is under State quarantine. "Quarantined pasture" would be defined as a confined grazing area established for the forage-feeding of restricted status cattle that has been approved for this purpose by the State representative and an APHIS representative, and that is under State quarantine. "Quarantined holding" facility would be defined as a confined drylot that has been approved by the State representative and an APHIS representative for the post-entry quarantine and tuberculin-testing of restricted status cattle, and that is under State quarantine. (In a drylot, all water and feed are brought to the animals in troughs.)

To prevent restricted status cattle from being commingled with other livestock, the proposed regulations provide that only restricted status cattle may be moved into a quarantined pasture, quarantined feedlot, or

quarantined holding facility. There may be cases where a feedlot operator introduces new cattle into a quarantined feedlot. In such cases, any non-restricted cattle that enter a quarantined feedlot and commingle with restricted status cattle would assume restricted status. Further, as discussed above, restricted status cattle that are not being moved directly to slaughter could be moved from a quarantined pasture, quarantined feedlot, or quarantined holding facility only if accompanied by a permit issued at the pasture, feedlot, or holding facility from which they are being moved. (Cattle in a lot that tests negative for tuberculosis in the 60-day post-entry tuberculin test would no longer be classified as restricted status cattle, and would be issued a certificate for movement from the quarantined holding facility, in accordance with proposed § 77.6, paragraphs (d)(5) and (d)(6)(ii).)

Restricted status cattle would at all times be required to be isolated from other livestock by a distance sufficient to prevent physical contact. In quarantined pastures, where structures and pens would not provide such isolation, double fences 10 feet apart, natural barriers, or the absence of adjacent herds would serve this purpose. To ensure that the area surrounding a quarantined pasture does not undergo significant changes that might affect the isolation of the restricted status cattle quarantined on the premises, the Administrator would approve a quarantined pasture for a period not to exceed 10 months.

In quarantined feedlots, commingling of different lots of restricted status cattle would be allowed. In quarantined holding facilities, however, each lot of restricted status cattle would be isolated from other restricted status cattle by double fences 10 feet apart. This would ensure that potentially infected animals would be prevented from spreading tuberculosis to cattle in other lots.

In quarantined feedlots and quarantined holding facilities, the proposed regulations would require that the structures, pens, implements, and conveyances be cleaned and disinfected within 15 days after the removal of each lot of restricted status cattle, in accordance with §§ 71.4, 71.7, and 71.10 through 12 in 9 CFR part 71.

Because of the post-entry tuberculin testing to be performed at quarantined holding facilities, proposed § 77.6(d)(4) requires that each such facility be equipped to handle the chute inspection and tuberculin testing of cattle. To ensure that animal health officials are available when needed, proposed § 77.6(d)(2)(i) requires that the importer

contact the State representative to schedule inspection and quarantine services no less than 14 days before the proposed date of entry of the restricted status cattle into the facility.

Proposed § 77.6(d)(5) provides for issuance of a certificate for movement from the quarantined holding facility, in accordance with individual State requirements, for restricted status cattle from a lot that tests negative for tuberculosis in the 60-day post-entry tuberculin test. As stated earlier, cattle from such a lot would no longer be classified as restricted status cattle. Proposed § 77.6(d)(6) requires that any cattle that test positive for tuberculosis in the 60-day post-entry tuberculin test (reactors) must be sent directly to slaughter or destroyed and subjected to a postmortem examination by an APHIS representative or a State representative trained in TB-postmortem techniques. All other cattle in that lot would be held at the quarantined holding facility until slaughter examination of the reactors. If gross or microscopic tuberculous lesions are detected in the reactors during slaughter or laboratory examination, the other cattle in the lot must be moved from the quarantined holding facility to a quarantined pasture, a quarantined feedlot, or directly to slaughter. All provisions for restricted status cattle discussed above would continue to apply.

If the slaughter or laboratory examination detects no tuberculous lesions in the reactors, the other cattle in the lot would be allowed to remain at the quarantined holding facility for retesting 60 days after the original post-entry tuberculin test; if the entire lot subsequently tests negative for tuberculosis, these cattle would be issued a certificate, in accordance with § 77.6(d)(5). However, if any retested cattle test positive for tuberculosis, the other cattle in the lot must be moved to a quarantined pasture, a quarantined feedlot, or directly to slaughter. All provisions for restricted status cattle discussed above would continue to apply.

To ensure that restricted status cattle of unknown disease status do not present a risk of exposing other livestock to tuberculosis, we further propose that:

- The Administrator and the State animal health official would establish procedures for: (1) Accounting for all restricted status cattle entering and leaving quarantined pastures, quarantined feedlots, and quarantined holding facilities, including the recording of official Mexican blue eartag numbers; and (2) the monitoring of quarantined pastures, quarantined

feedlots, and quarantined holding facilities by an APHIS representative or a State representative. State and Federal representatives would then be responsible for following the established procedures.

- Restricted status cattle could be moved into quarantined pastures on a lot-basis only; only the cattle comprising a single lot of restricted status cattle could be moved into the quarantined pasture. As a further safeguard, owners of adjacent properties would be notified of the presence of a quarantined pasture.

Miscellaneous

Because Hawaii has attained accredited-free status, we propose to remove § 50.16, "Certain cattle on the Island of Molokai in Hawaii," from the regulations; to remove the proviso referring to § 50.16 from the definition of "Permit" in § 50.1; and to remove the exception for exposed cattle moved in accordance with § 50.16 from § 77.5(b).

We propose to revise the definition of "Cattle and bison not known to be affected" in § 77.1, which currently reads "All cattle and bison except those originating from tuberculosis affected herds or from herds containing tuberculosis suspect cattle or bison." The nonsubstantive editorial change we propose would define "Cattle and bison not known to be affected" in more general terms, as "All cattle and bison of unknown disease status."

For clarity, we propose to reorganize § 92.427(c)(1) into subparagraphs and make nonsubstantive editorial changes to the text. We also propose to remove from § 92.427(c) the requirement that tattoos be described on certificates for cattle from Mexico. Current requirements for the identification of all cattle from Mexico to be identified by official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag numbers make the tattoo requirement unnecessary.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting

comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of any communicable disease of animals from a foreign country into the United States. This proposed rule would allow the importation of certain steers and spayed heifers from Mexico under restrictions that appear necessary to prevent the introduction or dissemination of tuberculosis.

Cattle imported into the United States from Mexico in 1993 accounted for about 1 percent of the total U.S. bovine population (1 million/99.4 million). The total value of imported Mexican cattle slightly exceeded \$361 million, which is less than 1 percent of the 1991 value of the U.S. live cattle inventory, estimated at more than \$64 billion.

Under the proposed rule, certain steers and spayed heifers from Mexico that are not being shipped directly to slaughter would be regarded as "restricted status cattle." As such, they would be required to move from the port of entry to a quarantined pasture, to a quarantined feedlot, or to a quarantined holding facility for the 60-day post-entry tuberculin test. If the entire lot in the quarantined holding facility is TB-free, the cattle would no longer be regulated as restricted status cattle. Any restricted status cattle that test positive for TB, and any cattle exposed to such reactors, would be ineligible for indemnity claims (indemnity payments amount to a maximum of \$750 per animal).

Although we have no basis for estimating the extent to which the quarantined holding facilities being proposed would be used, we expect most importers to move restricted status cattle to quarantined pastures or quarantined feedlots for finish feeding, and then to slaughter.

For importers who currently ship Mexican-origin cattle to pastures or feedlots, and then to slaughter, shipping, feeding, and grazing costs would not change. Therefore, we foresee little or no increase in importation costs because of the proposed requirement that the animals be shipped to quarantined pastures or quarantined feedlots.

Importers of rodeo steers appear to have the greatest interest in the post-entry tuberculin testing that would require selection of the quarantined holding facility, because certificates

would be required for these cattle to be moved from rodeo to rodeo, and certificates for restricted status cattle could be issued only at a quarantined holding facility. However, most rodeo steers imported into the United States from Mexico originate in states participating in the Mexican National Tuberculosis Eradication Program, and would be exempt from the proposed requirements.

By disallowing indemnity for test-positive restricted status cattle and animals exposed to such cattle, APHIS would shift the burden of risk from the taxpayer to the importer. Because it is impossible to project how many restricted status cattle will be identified as TB reactors as a result of the 60-day post-entry tuberculin test, it is also impossible to know how many importers might be affected by the denial of indemnity claims for such animals. As stated in the preceding paragraph, however, we expect few importers to opt for post-entry tuberculin testing at quarantined holding facilities. Accordingly, the economic effect of denying indemnity claims for test-positive restricted status cattle at quarantined holding facilities, and animals exposed to such cattle, is expected to be minimal.

For importers who ship Mexican-origin cattle to quarantined holding facilities, the costs associated with the post-entry tuberculin testing will slightly increase importation costs. Information on the potential effects of the proposed changes on feedlot owners is unavailable.

This proposed rule contains paperwork and recordkeeping requirements. Under this proposed rule, a permit would have to be issued by an APHIS representative, State representative, or accredited veterinarian before restricted status cattle could be moved anywhere other than directly to slaughter. A certificate would have to be issued for cattle that test negative for tuberculosis before they could be moved from the quarantined holding facility. In addition, this proposed rule would require that the official Mexican Government blue eartag numbers (or replacement eartags) of all restricted status cattle entering and leaving a quarantined pasture, quarantined feedlot, and quarantined holding facility, be recorded, in accordance with procedures to be established by the Administrator and the State animal health official.

The alternatives to this proposed rule would be to take no action or to prohibit the importation of certain steers and spayed heifers from Mexico. We do not consider taking no action a reasonable

alternative, because it would not reduce the risk that TB-infected steers and spayed heifers from Mexico might spread tuberculosis to U.S. livestock. We also do not consider importation under conditions other than those proposed a viable option, because we believe the proposed conditions are necessary to ensure that potentially infected steers and spayed heifers from Mexico do not spread tuberculosis to U.S. livestock.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 50, 77, and 92 would be amended as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a-1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 50.1 [Amended]

2. In § 50.1, the definition of Permit would be revised by removing the proviso after the semicolon and replacing the semicolon with a period.

3. In § 50.14, new paragraph (f) would be added to read as follows:

§ 50.14 Claims not allowed.

* * * * *

(f) If the cattle infected with tuberculosis are Mexican-origin steers or spayed heifers that tested positive to the post-entry tuberculin test performed in accordance with § 77.6(d) of this chapter, or are cattle that were exposed to such animals.

§ 50.16 [Removed]

4. Section 50.16 would be removed.

PART 77—TUBERCULOSIS

5. The authority citation for part 77 would continue to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

6. In § 77.1, the definitions of *Cattle and bison not known to be affected* and *Permit* would be revised, and definitions of *Herd of origin (originated in a herd)*, *Lot*, *Mexican National Tuberculosis Eradication Program*, *Quarantined feedlot*, *Quarantined holding facility*, *Quarantined pasture*, and *Restricted status cattle* would be added, in alphabetical order, to read as follows:

§ 77.1 Definitions.

* * * * *

Cattle and bison not known to be affected. All cattle and bison of unknown disease status.

* * * * *

Herd of origin (originated in a herd). Any herd in which cattle are born and remain until movement or any herd in which cattle remain for 120 days immediately prior to movement. As used in this part, *originated in a herd* shall have the same meaning as set forth here for *herd of origin*.

* * * * *

Lot. All the members of a group of cattle in a single consignment.

Mexican National Tuberculosis Eradication Program. (1) A program for bovine tuberculosis eradication

established by the National Government of Mexico that incorporates methods and rules that have been determined by the Administrator to be equivalent to the rules and methods set forth in the *Uniform Methods and Rules—Bovine Tuberculosis Eradication*, in which participation is on a state-by-state basis, and that has been determined by the Administrator to be equivalent to the testing, traceback, and eradication program adopted by any State establishing or maintaining modified accredited state status in the United States, in accordance with the *Uniform Methods and Rules—Bovine Tuberculosis Eradication*.

(2) The following Mexican states have attained status equivalent to modified accredited State status in the United States, as determined by the Administrator: [No states]

Permit. An official document (VS Form 1-27 or comparable State form) issued by an APHIS representative, State representative, or an accredited veterinarian at the point of origin or port of entry, for the movement of cattle or bison to be moved, under this part, directly to slaughter, or to a quarantined pasture, quarantined feedlot, or quarantined holding facility, which shows the tuberculosis status of each animal (reactor, suspect, exposed, or, in the case of restricted status cattle from Mexico, unknown), the eartag number and the name of the owner of such animal, the slaughtering establishment or quarantined pasture, quarantined feedlot, or quarantined holding facility to which the animals are to be moved, the official seal numbers, the purpose for which the animals are to be moved, and that they are eligible for such movement under the applicable Federal regulations.

Quarantined feedlot. A confined drylot for feeding of restricted status cattle that has been approved for this purpose by the State representative and an APHIS representative, and that is under State quarantine. (In a drylot, there are no provisions for pasturing or grazing, and all food and water is brought to the cattle in troughs.)

Quarantined holding facility. A confined drylot that has been approved by the State representative and an APHIS representative for the quarantine and post-entry tuberculosis-testing of restricted status cattle, and that is under State quarantine. (In a drylot, there are no provisions for pasturing or grazing, and all food and water is brought to the cattle in troughs.)

Quarantined pasture. A confined grazing area established for the forage-feeding of a single lot of restricted status cattle, that has been approved for this purpose by the State representative and an APHIS representative, and that is under State quarantine.

Restricted status cattle. All steers and spayed heifers from Mexico except those steers and spayed heifers that:

(1) Originated in a herd in a state that is participating in the Mexican National Tuberculosis Eradication Program and that is listed in the definition of *Mexican National Tuberculosis Eradication Program* in this section as having attained status equivalent to modified accredited State status in the United States, as determined by the Administrator; have been tuberculin tested by a salaried veterinarian of the National Government of Mexico or by a veterinarian accredited by the National Government of Mexico not more than 60 days before the date the animals are offered for entry into the United States, at a ranch of origin monitored by the animal health service of the National Government of Mexico or at a testing pen under the full-time supervision of the animal health service of the National Government of Mexico; and are moved directly to the port of entry from their ranch of origin or testing pen without having commingled with other cattle while en route to the port of entry; or

(2) Originated in herds declared to be tuberculosis-accredited by the Government of Mexico, if they are moved directly to the port of entry from their herd of origin without having commingled with cattle from any non-accredited herd while en route to the port of entry; or

(3) Were tuberculin tested with negative results for the entire lot at the port of entry, as provided in § 92.427(c)(3)(i) of this chapter; or

(4) Are consigned from the port of entry to a recognized slaughtering establishment, as provided in § 92.429 of this chapter.

§ 77.5 [Amended]

7. In § 77.5, the heading, the word "containing" would be removed and the word "containing" would be added in its place.

8. In § 77.5, paragraph (b), the introductory text, the words "Except for the movement of exposed cattle to a quarantined feedlot in accordance with § 50.16 of this chapter, exposed" would be removed and the word "Exposed" would be added in their place.

9. Section 77.6 would be redesignated as § 77.7 and a new § 77.6 would be added to read as follows:

§ 77.6 Restricted status cattle from Mexico.

Restricted status cattle are subject to the post-entry restrictions provided in this section, to other applicable provisions of this part, and to § 50.14(f) of this chapter.

(a) Restricted status cattle may be moved from the port of entry only if:

(1) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, or person designated by the APHIS representative or State representative;

(2) Accompanied by a permit; and

(3) Moved to a quarantined pasture, quarantined feedlot, or to a quarantined holding facility for quarantine and 60-day post-entry tuberculin test, as provided in paragraph (b), (c), or (d) of this section. Quarantined pastures, quarantined feedlots, and quarantined holding facilities may be located only in States that are not accredited-free States.

(b) **Quarantined feedlot.** (1) The Administrator will approve a quarantined feedlot after an APHIS representative or a State representative inspects the confined area and determines that all restricted status cattle will be secure and isolated from contact with other livestock. Any non-restricted cattle that commingle with restricted status cattle in a quarantined feedlot shall assume restricted status.

(2) The official Mexican Government blue eartag numbers of all restricted status cattle entering and leaving the feedlot must be recorded. (If any such eartag is missing, the APHIS representative, State representative, or accredited veterinarian must replace it with an APHIS-approved identification eartag conforming to the nine-character alpha-numeric National Uniform Eartagging System.)

(i) The Administrator and the State animal health official will jointly establish procedures for accounting for all restricted status cattle.

(3) An APHIS representative or a State representative will monitor all quarantined feedlots on a regular basis.

(i) The Administrator and the State animal health official will jointly establish procedures for monitoring quarantined feedlots.

(4) Cattle leaving a quarantined feedlot must be moved either to another quarantined feedlot or directly to slaughter. They must be moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, or

person designated by the APHIS representative or State representative, and must be accompanied by a permit issued at the feedlot. Cattle being moved directly to slaughter are exempt from the permit requirement.

(5) Structures, pens, implements, and conveyances must be cleaned and disinfected within 15 days after removal of each lot of cattle.

(c) *Quarantined pasture.* (1) The Administrator will approve a quarantined pasture for use by a single lot of restricted status cattle after an APHIS representative or a State representative inspects the confined area and determines that all fences, gates, and loading facilities are adequate; and that restricted status cattle will be isolated from contact with other livestock by double fencing (perimeter and inner fences 10 feet apart), by natural barriers, or by the absence of adjacent herds. The Administrator will approve a quarantined pasture for a period not to exceed 10 months.

(2) The official Mexican Government blue eartag numbers of all cattle entering and leaving the pasture must be recorded. (If any such eartag is missing, the APHIS representative, State representative, or accredited veterinarian must replace it with an APHIS-approved identification eartag conforming to the nine-character alphanumeric National Uniform Eartagging System.)

(i) The Administrator and the State animal health official will jointly establish procedures for accounting for all restricted status cattle.

(3) State or APHIS representatives will monitor all quarantined pastures on a regular basis.

(i) The Administrator and the State animal health official will jointly establish procedures for monitoring quarantined pastures.

(4) Cattle leaving a quarantined pasture must be moved either to another quarantined pasture, a quarantined feedlot, or directly to slaughter. They must be accompanied by a permit on which, among other things, the official seal numbers are recorded; and moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, or person designated by the APHIS representative or State representative. Cattle being moved directly to slaughter are exempt from the permit requirement.

(5) Owners of adjacent properties will be notified by the APHIS representative or the State representative of the presence of a quarantined pasture.

(d) *Quarantined holding facility.* The Administrator will approve a quarantined holding facility to be used to hold restricted status cattle for a 60-day post-entry tuberculin test if:

(1) The State in which the facility is located has entered into a written agreement with the Administrator, in which the State agrees to enforce its laws and regulations to control tuberculosis in accordance with the *Uniform Methods and Rules—Bovine Tuberculosis Eradication*, and to abide by the conditions established in this section.

(2) The facility is under the general supervision of a State veterinarian, is monitored by State or APHIS representatives, and is used exclusively to quarantine and tuberculin-test restricted status cattle.

(i) The importer must contact the State representative to schedule inspection and quarantine services no less than 14 days before the proposed date of entry of the restricted status cattle into the facility; and

(3) The quarantined holding facility and its maintenance and operation meet the minimum requirements of this paragraph.

(4) The APHIS representative or a State representative has inspected the confined area and determined that each lot of restricted status cattle will be secure and isolated from contact with other restricted status cattle by double fencing (perimeter and inner fences 10 feet apart), and that the facility is equipped with chutes for tuberculin testing.

(5) The official Mexican Government blue eartag numbers of all restricted status cattle entering and leaving the feedlot must be recorded. (If any such eartag is missing, the APHIS representative, State representative, or accredited veterinarian must replace it with an APHIS-approved identification eartag conforming to the nine-character alphanumeric National Uniform Eartagging System.)

(i) The Administrator and the State animal health official will jointly establish procedures for accounting for all restricted status cattle.

(6) Restricted status cattle in a lot that tests negative for tuberculosis in the post-entry test are no longer classified as restricted status cattle, and will be issued a certificate for movement from the quarantined holding facility.

(7) The reactors in a lot of restricted status cattle must be sent directly to slaughter or destroyed and subjected to a postmortem examination by an APHIS representative or a State representative trained in TB-postmortem techniques. The other cattle in that lot must be held

at the quarantined holding facility until slaughter examination of the reactors.

(i) If gross or microscopic tuberculous lesions are detected in the reactors, the other cattle in the lot must be moved from the quarantined holding facility to a quarantined pasture, a quarantined feedlot, or directly to slaughter. These restricted status cattle must be accompanied by a permit and moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, or person designated by the APHIS representative or State representative.

(ii) If no gross or microscopic tuberculous lesions are detected in the reactors, the other cattle in the lot may remain at the quarantined holding facility for retesting 60 days after the original post-entry test and, if the entire lot tests negative for tuberculosis, may be moved with a certificate, as provided in paragraph (d)(6). If any retested cattle test positive for tuberculosis, the other cattle in the lot must be moved to a quarantined pasture, a quarantined feedlot, or moved directly to slaughter.

(8) Quarantined holding facilities may be used to hold restricted status cattle for post-entry tuberculosis testing only.

(9) Structures, pens, conveyances, and other equipment must be cleaned and disinfected within 15 days after removal of each lot of cattle, in accordance with §§ 71.4, 71.7, and 77.10 through 12 of this chapter.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

10. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

11. In § 92.427, paragraph (c)(1) would be revised, and a new paragraph (c)(5) would be added to read as follows:

§ 92.427 Cattle from Mexico.

(c) *Tuberculosis.* (1) In addition to the provisions required in the certificate under paragraph (b) of this section, the certificate shall also show, for all cattle from Mexico except as provided in paragraph (c)(1)(v) of this section or consigned from the port of entry to a recognized slaughtering establishment, in accordance with § 92.429:

(i) That a review of the available herd history, including any tuberculin test

results, traceback slaughter reports and postmortem record, and any other available records or information, does not indicate evidence of tuberculosis or exposure to tuberculosis during the preceding 60 days.

(ii) For cattle other than steers and spayed heifers, that all cattle in the herd of origin, except steers and spayed heifers, were tuberculin tested with negative results not more than 365 days and not less than 90 days before the date the animals are offered for entry into the United States, and that, excepting the natural increase in the herd, all animals were included in the herd of origin at the time of the pre-entry herd test.

(iii) For steers and spayed heifers, that each was tuberculin tested with negative results, by a salaried veterinarian of the National Government of Mexico or a veterinarian accredited by the National Government of Mexico, not more than 60 days before the date the animals are offered for entry into the United States, with the following exception:

(A) The importer may elect to have the tuberculin test completed at the port of entry, under the supervision of the port veterinarian.

(iv) The date and place of inspection, the date and place and results of the tuberculin test if applicable, the name of the herd owner, the name of the consignor and consignee, and an individual description of each animal including breed, age, sex, and official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag numbers.

(v) Cattle that originated in herds declared to be tuberculosis-accredited by the Government of Mexico do not have to comply with the other provisions of this paragraph if they are moved directly to the port of entry from their herd of origin without having commingled with cattle from any non-accredited herd en route to the port of entry, and they are accompanied by a health certificate, issued by a salaried veterinarian of the Government of Mexico or issued by a veterinarian accredited by the National Government of Mexico and endorsed by a full-time salaried veterinary officer of the National Government of Mexico, certifying that the veterinarian issuing the certificate was authorized to do so, stating that the cattle originated in a tuberculosis-accredited herd, and identifying the animals by official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag numbers.

* * * * *

(5) Steers and spayed heifers imported into the United States from Mexico that

are not imported for immediate slaughter in accordance with § 92.429, or that are defined as restricted status cattle in § 77.1 of this chapter, must be moved directly from the port of entry to a quarantined pasture, quarantined feedlot, or quarantined holding facility, as provided in § 77.6 of this chapter. Such cattle may be moved from the port of entry only in vehicles sealed with seals of the United States Government, applied and removed by an APHIS representative, State representative, or person designated by the APHIS representative or State representative.

* * * * *

Done in Washington, DC, this 29th day of April 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94-11100 Filed 5-6-94; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Extension of Port Limits of Morgan City, Louisiana

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the port of entry of Morgan City, Louisiana. The proposed change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before July 8, 1994.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U. S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Inspection and Control, (202) 927-0192.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographical limits of the port of entry of Morgan City, Louisiana.

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations, Morgan City is listed as a port of entry in the New Orleans, Louisiana, Customs District within the South Central Region.

Previous Development of Port

The Morgan City port of entry was originally established by T. D. 54682 (published in the *Federal Register* on September 16, 1958, 23 FR 7131) with specific geographical limits which may be described generally as encompassing the southeastern one-third of St. Mary Parish and including the town of Morgan City where the office of the Customs Port Director is currently located. The geographical limits of the Morgan City port of entry were republished without a change in connection with a restatement of all New Orleans Customs district port boundaries in T. D. 84-126 (published in the *Federal Register* on May 31, 1984, 49 FR 22629).

In addition, in § 101.4, Houma, Louisiana (located within Terrebonne Parish), and Galliano, Louisiana (located within Lafourche Parish) were listed as Customs stations within the New Orleans Customs District and under the supervision of the Morgan City port of entry. Customs stations are defined in § 101.1(d), Customs Regulations, as "any place, other than a port of entry, at which Customs officers or employees are stationed * * *" for the purpose of entering and clearing vessels, accepting entries of merchandise, collecting duties, and enforcing the various provisions of the Customs and navigation laws of the United States. Thus, Customs stations are by definition located outside the limits of a port of entry, and Customs services are normally provided to the public at Customs stations on a reimbursable basis.

The Morgan City port of entry was established primarily to provide vessel documentation (now the function of the United States Coast Guard) in southwest Louisiana, and for a number of years after creation of the port of entry most Customs functions could be adequately

carried out within the port limits as originally established by T. D. 54682.

The Customs workload increased significantly in both volume and geographical scope, with the result that the majority of Customs service provided by the Morgan City port of entry took place outside the port limits, extending to Iberia Parish to the west of St. Mary Parish and, on the east, to the parishes of Terrebonne and Lafourche and the town of Grand Isle in Jefferson Parish.

Iberia Parish received foreign steel shipments by LASH-type barge and had a livestock export facility at its airport. International trade activities, including the construction of warehousing and other support facilities, were on the increase in both Iberia Parish and in the western portion of St. Mary Parish.

Terrebonne and Lafourche Parishes included four major shipyards where vessel construction and drydock repairs took place and where Customs clearance was required in connection with vessels arriving for repairs. Approximately 20 additional vessel arrivals took place each month at docking facilities along the Intracoastal Waterway within these 2 parishes.

In addition, Port Fourchon, located in Lafourche Parish, served as a hub for helicopter and service launch traffic to lightering vessels and tankers at the Louisiana Offshore Oil Port (LOOP) supertanker unloading terminal, resulting in approximately 100 helicopter and 45 service launch clearances by Customs each month in addition to the Customs services rendered in connection with the approximately 270 tanker arrivals at the LOOP each year. Port Fourchon was also used as a base for foreign-flag research vessels and derrick barges operating in the Gulf of Mexico, and vessels carrying containerized and other cargo from foreign countries arrived at Port Fourchon on a weekly basis.

Finally, the town of Grand Isle was the home port for a large number of private seagoing vessels which were required to report to Customs upon arrival from any foreign port or place. Customs services in connection with all of these activities were provided by personnel assigned to the Morgan City port of entry.

Based on the Customs workload pattern described above, by a final rule document published in the *Federal Register* on April 21, 1993 (58 FR 21350), Customs extended the limits of the Morgan City port of entry by including all territory within the parishes of Iberia, St. Mary, Terrebonne, and Lafourche, as well as the incorporated limits of the town of Grand

Isle in Jefferson Parish and that portion of the state highway which connects Grand Isle to Lafourche Parish.

Customs believes that the extension discussed above provided significant benefits to both Customs and the public. Extension of the port limits enabled Customs to move the office of the Port Director to Galliano in Lafourche Parish, which was more centrally located given the workload. The relocation increased the efficiency and productivity of the Port Director's office by reducing the time and effort required for travel and transportation of documents between the office and other locations within the extended port of entry, by enabling the Port Director to more effectively administer outside assignments and oversee other port details, and by streamlining Customs duty and other collection procedures. This increase in Customs efficiency and productivity had corresponding benefits for the public by enabling Customs to be more responsive to the needs of the trade community. In addition, by extending the port entry limits to include areas formerly serviced by Customs on a reimbursable basis, the proposal reduced the operating costs of private sector recipients of those services and led to an improvement in the overall prospects for increased international trade in the area covered by the new port of entry limits.

Current Proposed Expansion

During the comment period for the previous expansion of the port of Morgan City, it was suggested that the port limits be further expanded to include Lafayette Parish. Inasmuch as this suggestion was not part of the notice of proposed rulemaking published in the *Federal Register* for public comment on June 16, 1992 (57 FR 26806), Customs believed that such an additional expansion should be handled under separate notice and comment procedures, and it so advised the public in the final rule.

Customs is now proposing to further expand the port of Morgan City to include Lafayette Parish.

The Louisiana political community has shown considerable support for and interest in this latest expansion. Customs South Central Region and its New Orleans District strongly support this proposed expansion and feel confident that the challenges of this expansion can be met. Some of the local organizations strongly in favor are the Lafayette City and Parish Councils, the Greater Lafayette Chamber of Commerce, the Lafayette Airport Commission, the Lafayette Economic Development Authority, the Lafayette

Region Airport, and the Lafayette LeCentre Internationale.

Many of the reasons cited for the recent expansion of the port of Morgan City hold true for the proposed inclusion of Lafayette Parish. It was inadvertent not to have included Lafayette, the only Acadiana parish omitted, in the previous boundary change. The Greater Lafayette Chamber of Commerce states that Lafayette has traditionally been called the heart of Acadiana.

Several sources stated that the addition of Lafayette Parish would complement the current international trade activities in the parishes of Iberia, St. Mary, Terrebonne, and Lafourche and the town of Grand Isle, thus providing an economic boost to southern Louisiana. The area of Lafayette Parish is not large, but the city of Lafayette has a population of over 100,000, making it a significant population center. Lafayette Parish is adjacent to Iberia Parish, which currently represents the northwest limit of the port of entry.

Lafayette Parish is known as one of the largest centers of trade in southern Louisiana. The Lafayette Regional Airport, where the majority of Customs services will be performed, is the largest airport in the Acadiana area.

It is only twelve miles from the Iberia parish line, which is the current western boundary of the port of Morgan City. Lafayette Parish's inclusion in the international port of entry would provide a boost to the economy of southern Louisiana. It would reduce the operating costs of recipients of Customs services, thereby greatly improving prospects for international trade. It is our understanding that the Greater Lafayette Chamber of Commerce intends to establish an expanded freight trade to and from points south of the United States border—i.e., Central and South America.

The added area that Lafayette Parish would bring to the port is minimal and would not create an excessive burden on services already being provided. The port of Morgan City is staffed by a Port Director, two Customs Inspectors, and an Inspection Aide. The staff currently operates out of two offices, one in the town of Morgan City and the other in the town of Galliano. There is a need for an office on the western boundary, and such an office would be provided at the Lafayette Regional Airport Facility free of charge if this expansion is approved.

Initially, work assignments would be on an as-needed basis with actual workload determining permanent staffing requirements. Inspectors assigned to the Lafayette Airport would

be in an excellent position to provide service to the ports in Iberia, West St. Mary, and Morgan City. It would be closer to dispatch an inspector to those locations from Lafayette than from the port office in Galliano.

It would also reduce the operating costs of recipients of Customs services, thereby greatly improving prospects for international trade. The port expansion would enable Customs to service the proposed points of entry without establishing separate port administrations.

Proposed Extended Port Limits

The proposed extended geographic limits of the Morgan City port of entry are as follows: In the State of Louisiana: All of the territory within the Parishes of Iberia, Lafayette, Lafourche, St. Mary, and Terrebonne; the Corporate limits of the town of Grand Isle; and that portion of the right-of-way pertaining to State Highway 1 extending in a northeasterly direction from the Lafourche Parish and Jefferson Parish boundary line to the corporate limits of the town of Grand Isle.

If this proposed extension of the Morgan City port of entry limits is adopted, the list of Customs regions, districts and ports of entry in 19 CFR 101.3(b) will be amended accordingly.

Comments

Prior to adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11 (b), Customs Regulations (19 CFR 103.11 (b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street, NW., suite 4000, Washington DC.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

The Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553.

Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: April 16, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94-11005 Filed 5-6-94; 8:45 am]

BILLING CODE 4820-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4882-8]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency. **Action:** Notice of intent to delete the Bioclinical Laboratories site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Bioclinical Laboratories (BCL) site from the National Priorities List (NPL) and requests public comment on this action. The NPL is appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further action is appropriate at the BCL site under CERCLA. Moreover, EPA and the State have determined that activities conducted at the BCL site to date have been protective of public health, welfare, and the environment. **DATES:** Comments concerning the deletion of the BCL site from the NPL may be submitted on or before May 9, 1994.

ADDRESSES: Comments concerning the BCL site deletion may be mailed to:

Mr. Damian J. Duda, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, room 29-

100, 26 Federal Plaza, New York, New York 10278.

Background information on the BCL site is contained at the EPA Region II public docket, located at EPA's Region II office, and is available for viewing, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact Mr. Damian J. Duda at (212) 264-9589.

The public docket on the BCL site is also available for viewing at the document repositories located at:

Connetquot Public Library, 760 Ocean Avenue, Bohemia, New York 11716; and Sachem Public Library, 150 Holbrook, Holbrook, New York 11741.

The formal and more comprehensive Administrative Record for the BCL site is located at the Connetquot Library only.

FOR FURTHER INFORMATION CONTACT:

Damian Duda at (212) 264-6589.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

I. Introduction

EPA Region II announces its intent to delete the BCL site from the NPL and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such sites warrant such action.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the BCL site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this

determination, EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the BCL site:

1. EPA Region II has recommended deletion and has prepared the relevant documents. EPA has also made all relevant documents available in the Regional office and local BCL site information repositories.
2. The State of New York has concurred with the deletion decision.
3. Concurrent with this national Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate Federal, state and local officials and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on May 9, 1994 and concluding on June 7, 1994.

The comments received during the comment period will be evaluated before any final decision is made. If necessary, EPA Region II will prepare a Responsiveness Summary which will address any comments received during the public comment period.

If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a notice of deletion in the *Federal Register*. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The BCL site is located at 1585 Smithtown Avenue in the Hamlet of Bohemia, Town of Islip, Suffolk County, New York and is approximately 0.5 mile south of Long Island's MacArthur Airport.

The BCL site consists of a 10-unit (A-J), one-story building situated on a 2.6-acre paved lot. The building has approximately 39,000 square feet of floor space. The building is serviced by two distinct on-site sanitary systems, each consisting of a septic tank, distribution pool, and related storm drain drywells, located south of the building on the east and west sides.

BCL was founded in 1972 to formulate and repackage industrial chemicals for wholesale distribution to manufacturers and previously occupied Unit I of the 10-unit building. BCL utilized the east sanitary system. In 1984, BCL moved its operations to another location. As of April 1990, BCL had ceased operations altogether.

Panatone Finishing Corporation (Panatone), which leased Unit D, was determined to be another source of organic and inorganic contamination at the BCL site. Panatone was involved in the preparation and application of finished metal products and discharged to the west sanitary system of the building. Panatone is no longer in operation.

Previous BCL site investigations showed that there had been:

- (1) Unregulated discharges to the on-site sanitary systems and to an on-site leaching pool; and
- (2) Unacceptable raw material (chemicals) and waste handling practices which resulted in frequent spills to the surface soils.

The BCL site was proposed for the NPL on June 1, 1986 (52 FR 21099) and was promulgated final to the NPL on March 31, 1989 (54 FR 13296).

Historically, the Suffolk County Department of Health Services (SCDHS) issued enforcement actions against both BCL and Panatone, and some cleanup actions had been performed, with the most recent cleanup action occurring in May 1992.

Under the direction of EPA, Ebasco Services, Inc. conducted a remedial

investigation (RI) from May 1989 to March 1992 to characterize the geology, groundwater hydrology and chemical quality of the soils and groundwater at the BCL site. The investigation consisted of sampling the suspected source areas, the subsurface soils, the surface soils and the sediments and liquids in the two sanitary systems, a soil-gas survey, monitoring well installation (on-site and off-site), well-point sampling, groundwater sampling and geotechnical testing. All sampling results, both organic and inorganic, were compared with New York State and Federal applicable or relevant and appropriate requirements (ARARs).

Four rounds of groundwater sampling data, taken over the course of over two years, indicated isolated organic and inorganic contamination; in some cases, State or Federal maximum contaminants levels (MCLs) were exceeded. The contamination was determined to be the result of the following non-site related conditions: (1) Background or upgradient conditions; (2) high total suspended solids in some samples, which were not representative of the quality of the groundwater; and/or (3) ongoing discharges to the existing sanitary systems. The concentrations of contaminants in the sanitary sediments/ aqueous samples were also found to be related to ongoing discharges into the existing sanitary systems.

At the conclusion of the RI process, EPA, in consultation with the State of New York, issued a Record of Decision (ROD) on September 30, 1992, that determined that the BCL site does not pose a significant threat to human health or the environment and that no further action was required.

Having met the deletion criteria, EPA proposes to delete the BCL site from the NPL.

Dated: April 8, 1994.

Kathleen C. Callahan,
Acting Regional Administrator.

[FR Doc. 94-11084 Filed 5-6-94; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 434 and 435

[MB-044-P]

RIN 0938-AF15

Medicaid Program; Requirements for Certain Health Insuring Organizations and OBRA '90 Technical Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Medicaid regulations to: make those health insuring organizations (HIOs) that provide or arrange for health care services to Medicaid recipients, but are not subject to the requirements for health maintenance organizations (HMOs) set forth in section 1903(m)(2)(A) of the Social Security Act, subject to the regulations governing prepaid health plans (PHPs); and

Incorporate technical amendments relating to HMO enrollment, disenrollments, guaranteed eligibility and provisional status made by 1990 legislation.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 8, 1994.

ADDRESSES: Mail written comments (original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB-044-P, P.O. Box 7518, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB-044-P. Written comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. phone: (202) 690-7890.

FOR FURTHER INFORMATION CONTACT: Mike Fiore, (410) 966-4460.

SUPPLEMENTARY INFORMATION:**I. Health Insuring Organizations****A. Background**

Under the Medicaid program, States may arrange for the provision of services to Medicaid recipients through contracts with managed care entities such as health maintenance organizations (HMOs), health insuring organizations (HIOs), and prepaid health plans (PHPs).

An HIO is an entity that receives a premium or subscription charge from the State, typically based on the number of persons enrolled in the HIO, and assumes some risk of loss if the cost of the actual services exceeds the monthly capitation amount. Unlike HMOs or PHPs, the original HIOs did not themselves provide or arrange for health care services for their enrollees, but merely paid for the cost of services furnished to their members by independent providers. These original HIOs were essentially risk-bearing fiscal agents.

In recent years, certain entities that contracted with providers and required their enrolled members to obtain all of their medical care exclusively from these providers have either retained or adopted the label "HIO" in order to avail themselves of the less burdensome regulatory requirements applicable to HIOs, compared to the requirements applicable to HMOs or CMPs. This practice has had the effect of subjecting enrollees to the same membership restrictions that are characteristic of HMOs and PHPs, without the regulatory safeguards afforded the HMO and PHP enrollees.

Contracts between State agencies and HIOs that act as risk-bearing fiscal agents are made under the broad authority of section 1902(a)(4)(A) of the Social Security Act (the Act), which provides for "such methods of administration * * * as are found by the Secretary to be necessary for the proper and efficient operation of the plan", and are subject to the regulatory requirements of 42 CFR 434.40. Section 434.40 provides that HIO contracts must meet certain capitation, underwriting risk, and reinsurance requirements, but it is silent with regard to emergency services, grievance procedures, marketing practices, inspection of financial records, and other important regulatory issues that apply to HMOs and PHPs. Section 434.40 also specifies that HIO contracts must conform to § 434.6, that is, the general requirements for all contracts and subcontracts entered into between State agencies and providers as set forth in part 434.

Contracts with HMOs (and, as a result of legislation discussed below, some HIOs) that provide or arrange for "comprehensive services" on a risk basis are subject to the requirements of section 1903(m)(2) of the Act and implementing regulations under §§ 434.20 through 434.36.

"Comprehensive services" are defined under § 434.21(b) as inpatient hospital services and any of the following services, or any three or more of the following services or groups of services:

(1) Outpatient hospital services and rural health clinic services; (2) other laboratory and x-ray services; (3) skilled nursing facility (SNF) (now referred to as nursing facility (NF)) services and early and periodic screening, diagnosis, and treatment (EPSDT), and family planning; (4) physicians' services; and (5) home health services.

Those HIOs which provided or arranged for the delivery of comprehensive services (and assumed financial risk for those services) were made subject to these HMO requirements by section 9517(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA '85) with some exceptions. The provisions of section 9517(c) of COBRA '85 were not made applicable to HIOs that became operational before January 1, 1986. Also, HIOs that became operational after that date but which operate under a waiver approved under section 1915(b) of the Act before that date, were exempted by section 9517(c) from HMO requirements related to composition of enrollment and the right of enrollees to disenroll without cause, under sections 1903(m)(2)(A)(ii) and 1903(m)(2)(A)(vi) of the Act, respectively. (Note: Section 9517(c)(2)(b) of COBRA erroneously identified the exception clauses as (ii) and (iv). Section 1895(c)(4) of the Tax Reform Act of 1986, Public Law 99-514, corrected this error.)

Section 9517(c) of COBRA '85 was silent on the requirements applicable to HIOs which it did not subject to HMO requirements. This would include those HIOs within the explicit exceptions discussed above, as well as HIOs with risk contracts providing less than comprehensive services.

We believe that it would be inappropriate to permit an HIO that provides or arranges for services, yet is not subject to HMO rules, to remain subject to the HIO rules at § 417.40 governing those HIOs that only function as risk-bearing fiscal agents. We did not, however, include such a provision in proposed regulations published on August 25, 1988 (53 FR 32406). Those proposed regulations, which were designed to implement the statutory amendment subjecting some HIOs to section 1903(m) of the Act, thus would permit HIOs that provide or arrange for less than comprehensive services on a risk basis to be subject only to the rules governing HIOs that perform the original basic HIO services of paying for and assuming risk for health care services. In the final rule published on December 13, 1990 (55 FR 51292), we recognized the omission and declared our intent to publish, in a separate proposed rule, revisions to the

regulations that would make all HIOs that provide or arrange for services subject to the same regulations as PHPs if they are exempt from section 1903(m)(2)(A). However, we did not provide for a comment period on this policy. This document provides that comment period. Regulations that apply to PHPs are contained in §§ 434.20 through 434.36 and are derived from the authority granted to the Secretary under section 1902(a)(4)(A) of the Act, not section 1903(m)(2)(A) as discussed above. These are the same regulations that apply to Medicaid-contracting HMOs.

B. Provisions of the Proposed Rule

This proposed rule would subject all HIOs that assume risk and provide or arrange for services, but are exempt from section 1903(m)(2)(A) of the Act, to the same requirements that apply to PHPs as set forth in §§ 434.20 (d) and (e), 434.21 through 434.36, and 434.50 through 434.65. It would affect (1) HIOs that provide or arrange for comprehensive services and either were operational before January 1, 1986 or are otherwise exempted from section 1903(m)(2)(A) of the Act by statute, and (2) HIOs that provide or arrange for less than comprehensive services. We propose to amend § 434.44 by adding a new paragraph (c) to incorporate this provision.

This proposed rule also would expressly limit the applicability of the existing HIO requirements at § 434.40 to HIOs that only process claims and underwrite risk and do not provide or arrange for the delivery of health care services.

In addition, we propose revising the definition of "prepaid health plan" at § 434.2 to include HIOs that provide or arrange for health care services.

II. Technical Revisions—Omnibus Budget Reconciliation Act of 1990

Section 4732 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) made several changes to the Social Security Act which affected HMOs and Medicare-contracting competitive medical plans (CMPs) (defined in § 417.407(c)) which participate in the Medicaid program.

A. Waiver of Enrollment Requirements

Before the enactment of OBRA '90, an HMO that was a public entity could receive a waiver of the composition of enrollment requirement that Medicare and Medicaid recipients constitute less than 75 percent of the entity's total enrollment only if HCFA determined that the entity had special circumstances and the entity continued

efforts to enroll individuals who were not eligible for Medicare or Medicaid. Section 4732(a) of OBRA '90 eliminated the requirement that special circumstances must exist as the basis for granting the waiver.

We propose to revise our regulations at § 434.26 (b)(2) and (b)(3) to eliminate the requirement for the existence of special circumstances in order for HCFA to grant a waiver of the composition of enrollment requirements.

B. Guaranteed Eligibility in CMPs

Section 4732(b)(1) of OBRA '90 amended section 1902(e)(2)(A) of the Act (which allows for a minimum guaranteed enrollment period of up to 6 months) to add CMPs that contract with Medicare under section 1876 to the list of entities that, at a State's option, may deem individuals who lose eligibility before the end of the minimum enrollment period, to continue to be eligible until the end of the period.

We propose to amend §§ 435.212 and 435.326 to identify CMPs that contract with Medicare as one of the entities with which States may guarantee Medicaid eligibility.

C. Disenrollments in CMPs

Section 4732(b)(2) of OBRA '90 amended section 1903(m)(2)(F) of the Act, which, for purposes of Federal financial participation (FFP) imposes disenrollment restrictions on certain prepaid health plans, to add CMPs that contract with Medicare to the list of entities that may, at a State's option, restrict disenrollment without cause for Medicaid enrollees for up to 6 months. Disenrollment without cause would be permitted only in the first month of each period of enrollment.

We propose to amend § 434.27(d)(1) to add a new paragraph (vi) to identify CMPs that contract with Medicare as one of the organizations, with which States may contract, that may restrict disenrollment rights of Medicaid enrollees.

D. Reenrollment in HMOs

Section 4732(c) of OBRA '90 amended section 1903(m)(2) of the Act to provide that if a Medicaid-eligible individual is enrolled in an HMO in a given month and loses eligibility in the next month (or in the next 2 months) but in the succeeding month is again eligible for Medicaid benefits, the State agency may enroll that individual in the same HMO in which he or she was enrolled at the time of loss of eligibility.

We propose to add a new § 434.25(c) to incorporate this provision. We also propose to add a new paragraph (h) to § 434.27 to explain that a new restricted

period of disenrollment begins following each period of ineligibility as outlined by § 434.25(c).

E. Elimination of Provisional Qualification of HMOs

Section 4732(d) of OBRA '90 amended section 1903(m) of the Act to eliminate a provision under which a State Medicaid agency could determine that a Federally qualified HMO was in provisional status because more than 90 days had elapsed since the HMO applied to the Public Health Service (PHS) for Federal qualification and the PHS had not made a final determination. This status continued until the PHS made the final determination or the contract with the Medicaid agency was terminated, whichever occurred first.

Section 434.20 of the Medicaid regulations contained the provision that allowed State agencies to contract with provisional status HMOs and § 434.72 provided for FFP in expenditures for payments to these provisional status HMOs. We propose to revise § 434.2 to delete the definition of a provisional status HMO, revise § 434.20(a)(1) to remove all references to provisional status HMOs, and delete § 434.72 in its entirety.

III. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities.

The RFA defines "small entity" as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We do not consider States to be small entities. However, we do consider HMOs, PHPs, and HIOs to be small entities.

The provision that would subject HIOs that provide or arrange for services to the requirements governing PHPs would affect HIOs in at least three States. HIOs in two of these States that are currently fully operational serve a 3 combined Medicaid enrollment of approximately 43,800 individuals. These HIOs currently operate under section 1915(b) freedom of choice waivers which require adequate access to quality services. They are also regulated by their respective States in a manner similar to HMOs and PHPs. There is no anticipated change in operation other than they would be required to afford HIO Medicaid enrollees the same protections as those

Medicaid enrollees enrolled in other prepaid plans that arrange for or provide services.

The technical provisions in this proposed rule are necessary to conform the Medicaid regulations to provisions of OBRA '90. We anticipate that these provisions would have a negligible impact.

We have not prepared a regulatory flexibility analysis because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IV. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that are subject to review by the Executive Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

V. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and we will respond to the comments in the preamble of the final rule that is issued.

List of Subjects

42 CFR Part 434

Grant programs-health, Health maintenance organizations (HMO), Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health,

Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages. 42 CFR Chapter IV would be amended as follows:

A. Part 434 would be amended as set forth below:

PART 434—CONTRACTS

1. The authority citation for part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 434.2, the introductory text is republished, the definition of "Prepaid health plan" is revised and the definition of "Provisional status HMO" is removed, to read as follows:

§ 434.2 Definitions.

As used in this part, unless the context indicates otherwise—

* * * * *

Prepaid health plan (PHP) means an entity, including an HIO, that provides or arranges for the provision of medical services to enrolled recipients, under contract with the Medicaid agency and on the basis of prepaid capitation fees, but is not subject to the requirements in section 1903(m)(2)(A) of the Act.

* * * * *

3. In § 434.20, the introductory text of paragraph (a) is republished and paragraph (a)(1) is revised to read as follows:

§ 434.20 Basic rules.

(a) *Entities eligible for risk contracts for services specified in § 434.21.* A Medicaid agency may enter into a risk contract for the scope of services specified in § 434.21 only with an entity that—

(1) Is a Federally-qualified HMO;

* * * * *

4. In § 434.25, a new paragraph (c) is added to read as follows:

§ 434.25 Coverage and enrollment.

* * * * *

(c) If a Medicaid eligible individual is enrolled in an HMO in a given month and loses eligibility in the next month (or in the next 2 months) but in the succeeding month is again eligible for Medicaid benefits, the State agency may enroll that individual in the same HMO that he or she was enrolled in at the time of loss of eligibility.

5. In § 434.26, paragraphs (b)(2) and (3) are revised to read as follows:

§ 434.26 Composition of enrollment.

* * * * *

(b) *Exceptions—*

* * * * *

(2) *Waiver for public HMOs with risk comprehensive contracts.* The Regional

Administrator may approve waiver or modification of the requirement of paragraph (a) of this section, for an HMO that is owned or operated by a State, county, or municipal health department or hospital if the HMO has made and continues to make reasonable efforts to enroll individuals who are not eligible for Medicare or Medicaid.

(3) *Waiver for certain nonprofit HMOs with risk comprehensive contracts.* The Regional Administrator may approve waiver or modification of the requirement of paragraph (a) of this section, for a nonprofit HMO which has a minimum of 25,000 members; is and has been federally qualified for a period of at least 4 yrs; provides basic health services through members of its staff; is located in an area designated as medically underserved under section 1302(7) of the Public Health Service Act; and has previously received a waiver under section 1115 of the Act of the requirement described in paragraph (a) of this section, if the HMO has made and continues to make reasonable efforts to enroll individuals who are not eligible for Medicare or Medicaid.

* * * * *

6. In § 434.27, (d) introductory text and (d)(1) introductory text are republished, paragraph (d)(1)(v) is revised, and new paragraphs (d)(1)(vi) and (h) are added, to read as follows:

§ 434.27 Termination of enrollment.

* * * * *

(d) A State plan may provide for contracts with certain organizations which restrict disenrollment rights of Medicaid enrollees under paragraph (b)(2) of this section if the following conditions are met:

(1) The organization is—

* * * * *

(v) An entity described in § 434.26(b)(3); or

(vi) A competitive medical plan as defined in § 417.407(c) of this chapter that has a valid contract with HCFA under section 1876 of the Act; and

* * * * *

(h) When an agency has elected to restrict disenrollment, the restricted disenrollment period commences with each enrollment, including reenrollments permitted under § 434.25(c). Disenrollment without cause will be permitted during the first month of each new restricted disenrollment period.

7. In § 434.40, paragraphs (a) introductory text is revised to read as follows:

§ 434.40 Contract requirements.

(a) Contracts with health insuring organizations that are not subject either

to the requirements in section 1903(m)(2)(A) of the Act or to §§ 434.21 through 434.36 must:

* * * * *

8. In § 434.44, a new paragraph (c) is added to read as follows:

§ 434.44 Special rules for certain health insuring organizations.

* * * * *

(c) A health insuring organization that provides or arranges for the provision of services, and meets the definition of a PHP in § 434.2, must meet the requirements in §§ 434.20(d) and (e), §§ 434.21 through 434.36 and in §§ 434.50 through 434.65 that apply to PHPs.

§ 434.72 [Removed]

9. § 434.72 is removed.

B. Part 435 would be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.212, the introductory text is revised to read as follows:

§ 435.212 Individuals who would be ineligible if they were not enrolled in an HMO.

The agency may provide that a recipient who is enrolled in a federally qualified HMO (under a risk contract as specified in § 434.20(a)(1) of this chapter) or a competitive medical plan with a current Medicare contract under section 1876 of the Act and who becomes ineligible for Medicaid is considered to continue to be eligible—

* * * * *

3. Section 435.326 is revised to read as follows:

§ 435.326 Individuals who would be ineligible if they were not enrolled in an HMO.

If the agency provides Medicaid to the categorically needy under § 435.212, it may provide Medicaid under the same rules to medically needy recipients who are enrolled in a federally qualified HMO or in an entity specified in § 417.407(c) of this chapter with a current contract with Medicare under section 1876 of the Act; § 434.20(a)(3) and (a)(4), § 434.26(b)(3), or § 434.26(b)(5)(ii) of this chapter, or section 1903(m)(6) of the Act which provides services as described in § 434.21(b) of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: November 3, 1993.

Bruce C. Vladeck

Administrator, Health Care Financing Administration.

Dated: February 20, 1994.

Donna E. Shalala

Secretary.

Editorial Note: This Document was received at the Office of the Federal Register on May 4, 1994.

[FR Doc. 94-11097 Filed 5-6-94; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Public Comment Period on Proposed Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended, (Act) gives notice that a public hearing will be held on the proposal to designate critical habitat in Washington, Oregon, and California for the marbled murrelet (*Brachyramphus marmoratus marmoratus*). The hearing will allow all interested parties to submit oral and written comments on the proposal. The public comment period will be reopened until June 9, 1994.

DATES: A public hearing will be held from 2 p.m. to 5 p.m. and from 6:30 p.m. to 9:00 p.m. on May 24, 1994, in North Bend, Oregon. Each session will begin with a presentation on the proposal, after which a panel of Fish and Wildlife Service staff will answer questions and take verbal comments on the proposal from people who have registered to speak. The public comment period will be reopened until June 9, 1994.

ADDRESSES: The public hearing will be held at the North Bend Community Center, 2222 Broadway, North Bend, Oregon. Written comments and materials may be submitted at the hearing and may be sent to the Assistant Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 911 Northeast 11th Avenue, Portland, Oregon, 97232. Comments and materials

received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hall, Assistant Regional Director for Ecological Services at the above address (503/231-6159).

SUPPLEMENTARY INFORMATION: The marbled murrelet is a small seabird of the Alcidae family that feeds on small fish in near-shore marine waters and nests in mature and old-growth forests up to 50 miles inland. The subspecies ranges from the Aleutian Archipelago in Alaska to central California. The subspecies is listed as threatened in Washington, Oregon, and California.

Between 8,000 and 10,000 birds are estimated in Washington, Oregon, and California. Estimated recruitment rates of juvenile birds are extremely low, indicating a declining population. The species is primarily threatened by historic and ongoing loss of forest nesting habitat, with additional mortality from gill-net fishery operations and oil spills.

The U.S. Fish and Wildlife Service proposed on January 27, 1994, (59 FR 3811) to designate critical habitat in Washington, Oregon, and California, for the marbled murrelet (*Brachyramphus marmoratus marmoratus*), a threatened species under the Act. Proposed critical habitat units are located on Federal lands.

Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to the proposed rule, Cary J. Jones, Executive Director, Douglas Timber Operators, requested a public hearing in a letter dated March 14, 1994. As a result, the Service has scheduled a public hearing at North Bend Community Center, 2222 Broadway, North Bend, Oregon on May 24, 1994.

Those parties wishing to make a statement for the record should bring a copy of their statement to present to the Service at the start of the hearing. Oral statements and questions may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits on the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. Written comments must be submitted at the hearing or mailed to the address given in the ADDRESSES section of this notice. The comment period closes on June 9, 1994.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting, and recordkeeping requirement, and Transportation.

Dated: May 2, 1994.

Marvin L. Plenert,
Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94-11088 Filed 5-6-94; 8:45 am]

BILLING CODE 4310-55-P

Notices

Federal Register

Vol. 59, No. 88

Monday, May 9, 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

Farmers Home Administration

Availability of Housing Application Packaging Grant (HAPG) Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces the availability of Housing Application Packaging Grant (HAPG) funds for Fiscal Year (FY) 1994. This action is taken to publish notice of the availability of HAPG funds to eligible packaging organizations in targeted, underserved counties and colonias for Sections 502, 504, 514, 515, 516, 524, and 533 housing programs. The intended effect is to make the public aware of housing application packaging grant funds available through FmHA.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Marty Horwath, Senior Loan Specialist, Single Family Housing Loan Processing Division, at (202) 720-1486 or Sue Harris-Green, Senior Loan Specialist, Multi-Family Housing Processing Division at (202) 720-1660. The address is USDA-FmHA, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250-0700.

SUPPLEMENTARY INFORMATION:

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

- 10.405—Farm Labor Housing Loans and Grants
- 10.410—Very Low to Moderate Income Housing Loans
- 10.411—Rural Housing Site Loans
- 10.415—Rural Rental Housing Loans
- 10.417—Very Low-Income Housing Repair Loans and Grants
- 10.433—Rural Housing Preservation Grants
- 10.442—Housing Application Packaging Grants

Discussion of Notice

On November 3, 1993, FmHA published a final rule announcing the implementation of the Housing

Application Packaging Grants (HAPG) for FmHA's Rural Housing programs. This notice provides guidance of the availability of funds for FY 1994.

Funding for FY 1994 for HAPG is \$6.5 million. Initial set aside for Sections 502/504 is \$2.5 million. Each participating State's funds is based on its number of eligible counties/colonias, with each county/colonia receiving a prorata share of the total funds available. See the spreadsheet at the end of this notice for the allocation of funds.

Funding for sections 514, 515, 516, 524, and 533 is \$1 million and will be held in reserve in the National Office. All States are encouraged to request funds for Multi-Family programs which will be considered on a first-come-first-served basis.

A National Office reserve is available on an individual case basis when the State is unable to fund a request from its regular allocation. A total reserve of \$3 million is available for all programs.

Pooling of unused HAPG funds is tentatively scheduled for July 15, 1994, and may be changed administratively, based upon fund usage. All unused grant funds will be rolled over into FY 1995.

The following is a list of HAPG funds allocated for FY 1994 for Section 502/504 Programs for participating states:

FARMERS HOME ADMINISTRATION—SECTIONS 502/504 RURAL HOUSING APPLICATION PACKAGING GRANT FUNDING [FY 1994]

State	Number of counties eligible	Percent of total counties	Allocation	Number of packaging grants per allocation
Alabama	13	4.32	108,000	216
Alaska	5	1.66	41,500	83
Arizona	8	2.66	66,400	133
Arkansas	5	1.66	41,500	83
California	3	1.00	24,900	50
Colorado	1	0.33	8,300	17
Florida	2	0.66	16,600	33
Georgia	22	7.31	182,700	365
Idaho	1	0.33	8,300	17
Kentucky	25	8.31	207,600	415
Louisiana	10	3.32	83,100	166
Mississippi	27	8.97	224,300	449
Montana	2	0.66	16,600	33
New Mexico	11	3.65	91,400	183
North Carolina	4	1.33	33,200	66
North Dakota	3	1.00	24,900	50
Ohio	1	0.33	8,300	17
South Carolina	6	1.99	49,800	100
South Dakota	9	2.99	74,800	150
Tennessee	2	0.66	16,600	33
Texas	45	14.95	373,800	748

FARMERS HOME ADMINISTRATION—SECTIONS 502/504 RURAL HOUSING APPLICATION PACKAGING GRANT FUNDING—
Continued
[FY 1994]

State	Number of counties eligible	Percent of total counties	Allocation	Number of packaging grants per allocation
Utah	1	0.33	8,300	17
Virginia	4	1.33	33,200	66
Washington	2	0.66	16,600	33
West Virginia	4	1.33	33,200	66
Wisconsin	1	0.33	8,300	17
Puerto Rico	77	25.58	639,700	1,278
Virgin Islands	2	0.66	16,600	33
West Pac Terr	5	1.66	41,500	83
Total counties	301	100.00		
State total			\$2,500,000	5,000
National total			\$6,500,000	

\$1 million for sections 514/516, 515, 524, and 533 to be held in the national office, available on a first-come-first-served basis.

A total reserve of \$3 million is available for all programs.

Dated: May 1, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94-11015 Filed 5-6-94; 8:45 am]

BILLING CODE 3410-07-U

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Single-User Toilet and Bathing Facilities; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) will hold an informational meeting on access to single-user toilet and bathing facilities in Washington, DC on May 24, 1994.

DATES: The meeting is scheduled for Tuesday, May 24, 1994 from 10 a.m.-3 p.m.

ADDRESSES: The meeting will be held at 1331 F Street, NW., Washington, DC in the third floor training room of the President's Committee on Employment of People With Disabilities.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, 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.

21 (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 has received comments from organizations representing people with disabilities and from individuals who, because they are provided personal assistance by members of the opposite sex, need toilet or bathing facilities that accommodate both persons. When multiple fixture facilities are provided, the privacy of both the individual with a disability and other users of the facility may be compromised. The purpose of the meeting is to provide interested persons an opportunity to further define the scope of the problem and to recommend a plan for action. Persons may present oral or written statements.

The meeting site will be accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Marsha Mazz by May 16, 1994 at (202) 275-5434 ext. 21 (Voice) or (202) 275-5449 (TTY). These are not toll free numbers.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 94-11014 Filed 5-6-94; 8:45 am]

BILLING CODE 8150-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the

provisions of the Paperwork Reduction Act (44 U.S. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Public Assistance Payments by County.

Form Number: Agency-NA; OMB—0608-0037.

Type of Request: Renewal of currently approved collection.

Burden: 24 Respondents; 144 reporting hours.

Average Hours Per Response: 6 Hours.

Needs and Uses: The Bureau of Economic Analysis prepares county estimates of personal income. To produce county estimates of public assistance payments, which are a part of personal income, it is necessary to request data directly from the responsible State agencies. The data which are compiled by the States for their own administrative purposes are only available from the State administering the programs.

Affected Public: State Government agencies.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Paul Bugg, (202) 395-3093.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482-3271, Department of Commerce, room H5327, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Paul Bugg, OMB Desk officer, room 3228, New Executive Office Building, Washington, DC 20503.

Dated: May 3, 1994.

Edward Michals,
Departmental Clearance Officer, Office of
Management and Organization.
[FR Doc. 94-11128 Filed 5-6-94; 8:45 am]
BILLING CODE 3510-CW-M

**Agency Form Under Review by the
Office of Management and Budget
(OMB) DOC has Submitted to OMB for
Clearance, the Following Proposal for
Collection of Information Under the
Provisions of Paperwork Reduction
Act (44 U.S.C. Chapter 35)**

Agency: Minority Business
Development Agency.
Title: Competitive Application
Package for funding to operate technical
assistance projects (SF 424 and
Evaluation Criteria).

Form Number: SF-424; and MBDA
0640-0006.

Type of Request: Revision of a
currently approved collection.

Burden: 550 respondents; 44,000
reporting hours; 80 average hours per
response.

Needs and Uses: MBDA 0640-0006 is
needed to evaluate applicant's
experience and resources against
uniform program standards.

Affected Public: Individuals or
households, state or local government,
businesses or other for-profit
institutions, and non-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to
obtain or retain a benefit.

OMB Desk Officer: Gary Waxman,
202-395-7340.

Copies of the above information
collection proposal can be obtained by
calling or writing DOC Clearance
Officer, Edward Michals, 202/482-3271,
Department of Commerce, room H5317,
14th and Constitution Avenue, NW.,
Washington, DC 20230.

Written comments and
recommendations for the proposed
information collection should be sent to
Gary Waxman, OMB Desk Officer, room
3208, New Executive Office Building,
Washington, DC 20503.

Dated: May 3, 1994.

Edward Michals,
Department of Commerce Clearance Officer,
Office of Management and Organization.
[FR Doc. 94-11129 Filed 5-6-94; 8:45 am]
BILLING CODE 3510-CW-M

**Agency Information Collection Under
Review by the Office of Management
and Budget (OMB)**

DOC has submitted to OMB for
clearance the following proposal for

collection of information under the
provisions of the Paperwork Reduction
Act (44 U.S.C. chapter 35).

Agency: National Institute of
Standards and Technology.

Title: Energy-Related Invention
Evaluation Request.

Form Number: Agency Number:
NIST-1019, OMB, Number: 0693-0002.

Type of Request: Revision.
Burden: 2,000 responses; 2,000
reporting hours.

Needs and Uses: Need the
information to evaluate inventions. The
information is used solely for evaluating
the inventions submitted and in
communicating with the inventor or
their representative.

Affected Public: Individuals or
households, businesses or others for
profit, small businesses or
organizations.

Frequency: On Occasion.

Respondent's Obligation: Required for
Benefit.

OMB Desk Officer: Maya A. Bernstein
(202) 395-3785.

Copies of the above information
collection proposal can be obtained by
calling or writing DOC Clearance
Officer, Edward Michals, (202) 482-
3271, Department of Commerce, room
5327, 14th and Constitution Avenue,
NW., Washington, DC 20230.

Written comments and
recommendations for the proposed
information collection should be sent to
Maya A. Bernstein, OMB Desk Officer,
room 3235, New Executive Office
Building, Washington, DC 20503.

Dated: May 3, 1994.

Edward Michals,
Departmental Clearance Officer, Office of
Management and Organization.
[FR Doc. 94-11130 Filed 5-6-94; 8:45am]
BILLING CODE 3510-CW-M

International Trade Administration

[A-588-604]

**Tapered Roller Bearings and Parts
Thereof, Finished or Unfinished, From
Japan; Affirmation of the Results of
Redetermination Pursuant to Court
Remand**

SUMMARY: On February 15, 1994, the
United States Court of International
Trade (CIT) affirmed the Department of
Commerce's redetermination on remand
and amendment to the redetermination
on remand of the final results of the
administrative review of the
antidumping duty order on tapered
roller bearings and parts thereof,
finished and unfinished, from Japan (57
FR 4951, February 11, 1992) *NSK Ltd.*

and *NSK Corporation v. United States*
(Slip. Op. 93-178, September 10, 1993)
(*NSK I*) and *NSK Ltd. and NSK
Corporation v. United States* (Slip. Op.
93-216, November 18, 1993) (*NSK II*).
The results covered the period October
1, 1988 through September 30, 1989.

EFFECTIVE DATE: May 9, 1994.

FOR FURTHER INFORMATION CONTACT:
Maureen Shields or John Kugelmann at
(202) 482-5253, Office of Antidumping
Compliance, Import Administration,
International Trade Administration,
U.S. Department of Commerce, 14th
Street and Constitution Avenue NW.,
Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 1993, the CIT
issued an order remanding to the
Department of Commerce (the
Department) the final results of the
administrative review of the
antidumping duty order on tapered
roller bearings and parts thereof,
finished or unfinished, from Japan (57
FR 4951, February 11, 1992), and on
November 18, 1993, the CIT issued an
order to the Department further
remanding these results.

In its decision in *NSK I*, the CIT
remanded the final results to the
Department: (1) To correct the
misidentification of a part's 19-digit
number, (2) to search for and average
difference-in-merchandise adjustment
(difmer) data reported for the quarter
during which a particular TRB model
was sold and for the preceding quarter
if it finds none in the same quarter as
that in which the sale occurs, and (3) to
enable the Department to reconsider all
cost-of-production information on the
record, including cost information
reported for quarters subsequent to sale.

In *NSK II*, the CIT further remanded
the case to the Department to add *NSK's*
U.S. direct selling expenses to foreign
market value, rather than subtracting
them from United States price.

In its decision in *Timken Co. v.
United States*, 893 F.2d 337 (Fed. Cir.
1990) (*Timken*), the United States Court
of Appeals for the Federal Circuit held
that, pursuant to 19 U.S.C. 1516a(e), the
Department must publish a notice of a
court decision which is not "in
harmony" with a Department
determination, and must suspend
liquidation of entries pending a
"conclusive" court decision. These
remand instructions constitute a
decision not in harmony with the
Department's final results of review.
This notice fulfills the publication
requirements of *Timken*.

Accordingly, the Department will
continue the suspension of liquidation

of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final results of the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished, from Japan to reflect the amended margin of 15.02 percent in the Department's amended redetermination on remand, which was affirmed by the CIT.

Dated: April 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-11126 Filed 5-6-94; 8:45 am]

BILLING CODE 3510-DS-M

Notice of Disposition of Application for Duty-Free Entry of Scientific Instrument

We have been advised that no tariff was levied on the entry covered by Docket Number 94-017 (See notice at 59 FR 13705, March 23, 1994). We are treating the docket as a withdrawal pursuant to Sec. 301.5(g) of the regulations and have discontinued processing.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94-11125 Filed 5-6-94; 8:45 am]

BILLING CODE 3510-DS-F

Minority Business Development Agency

Business Development Center Applications: State of Connecticut (Service Area)

AGENCY: Minority Business Development Agency; Commerce.

ACTION: Notice.

SUMMARY: Minority Business Development Agency (MBDA) is canceling the announcement to solicit competitive applications under its Minority Business Development Center program to operate the State of Connecticut MBDC for a three (3) year period, starting June 1, 1994 to May 31, 1995 in the State of Connecticut SMSA (Closing date March 7, 1994). Refer to the *Federal Register*, dated Thursday February 3, 1994, Volume 59, No. 23, Page 5178.

Dated: May 3, 1994.

William R. Fuller,

Acting Regional Director, New York, Regional Office.

[FR Doc. 94-11135 Filed 5-6-94; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

[I.D. 042894C]

Regional Fishery Management Councils; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Chairmen of the New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf of Mexico, Pacific, North Pacific, and Western Pacific Fishery Management Councils (Councils) will meet on May 15-16, 1994, at the Vista Hotel, 1400 M Street, NW., Washington, DC to address the agenda items noted below. The meeting will begin at 9 a.m. on May 15, at 8 a.m. on May 16, and end at approximately noon on May 16.

The following will be discussed:

On May 15, Magnuson Fishery Conservation and Management Act reauthorization and briefing on other fishery related legislation. On May 16, administrative matters, as listed below:

- (1) Paying for unused sick and annual leave;
- (2) Workload analysis;
- (3) Designating a single grants management specialist for all Councils;
- (4) Locality pay;
- (5) Standards for Council member removal;
- (6) Financial disclosure;
- (7) Establishing standard definitions for marine recreational fishermen/fishing and charterboat vessels;
- (8) Policy on Indigenous People;
- (9) Social Science Research and Data Collection; and
- (10) The Food and Agricultural Organization of the United Nations Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, and the United Nations conference on straddling stocks and highly migratory species.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

SUPPLEMENTARY INFORMATION: This 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: May 3, 1994

David S. Crestin

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

[FR Doc. 94-11073 Filed 5-6-94; 8:45 a.m.]

BILLING CODE 3510-22-F

[I.D. 042594C]

Marine Mammals

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

ACTION: Receipt of Application to Modify Permit No. 788 (P129I).

SUMMARY: Notice is hereby given that Bruce R. Mate, Ph.D., Professor, Fisheries and Wildlife, Oregon State University, Newport, OR 97365-5296, has requested a modification to Permit No. 788.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713-2289);

Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802-4213 (310/980-4016); and

Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C51700, Seattle, WA 98115 (206/526-6150).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 788, issued on August 10, 1992 (57 FR 37527) is requested under the authority of the Marine Mammal Protection Act of

1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 788 authorizes the Holder to incidentally harass up to 440 sperm whales (*Physeter macrocephalus*) while attempting to satellite tag up to 10 per year in the Gulf of Mexico.

The Holder has requested authorization to extend the area of take to the North Pacific Ocean, specifically 20 miles south of Point Sur north to Bodega Bay and the Southern California Bight, site of the proposed Acoustic Thermometry of Ocean Climate (ATOC) project. No additional animals are requested and the research protocol authorized in Permit No. 788 will not change.

Dated: April 29, 1994.

William W. Fox, Jr., Ph.D.

Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 94-11080 Filed 5-6-94; 8:45a.m.]

BILLING CODE 3510-22-F

[I.D. 042694A]

Marine Mammals

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

ACTION: Receipt of application for a scientific research permit (P351E).

SUMMARY: Notice is hereby given that the North Gulf Oceanic Society, P.O. Box 15244, Homer, AK 99603, has applied in due form for a permit to take by potential harassment humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

DATES: Written comments must be received by June 8, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713-2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668.

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver

Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant seeks authorization for the potential harassment of up to 100 humpback whales annually during repeated (an average of 6 times annually per individual whale) approaches for purposes of photo-identification. The applicant proposes to initiate this work upon permit issuance. Activities will be conducted primarily in the months of May through September over a 5-year period, in Prince William Sound and waters from the Copper River Delta to Kachemak Bay.

Dated: April 29, 1994.

William W. Fox, Jr., Ph.D.

Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 94-11081 Filed 5-6-94; 8:45a.m.]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations With the Government of El Salvador on Certain Cotton and Man-Made Fiber Textile Products

May 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT:

Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On April 25, 1994, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on December 9, 1993, the Government of the United States requested consultations with the Government of El Salvador with respect to men's and boys' cotton and man-made fiber woven shirts in Categories 340/640, produced or manufactured in El Salvador.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of El Salvador, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the twelve-month period which began on April 25, 1994 and extends through April 24, 1995, at a level of not less than 373,803 dozen.

A summary market statement concerning Categories 340/640 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 340/640, or to comment on domestic production or availability of products included in Categories 340/640, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of El Salvador.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or

the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 340/640. Should such a solution be reached in consultations with the Government of El Salvador, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—El Salvador

Category 340/640—Men's and Boys' Cotton and Manmade Fiber Woven Shirts
April 1994

Import Situation and Conclusion

U.S. imports of men's and boys' cotton and manmade fiber woven shirts, Category 340/640, from El Salvador reached 373,803 dozen for the year ending January 1994, more than nine times the 41,246 dozen imported a year earlier. Imports from El Salvador were 35,803 dozen in 1992.

The sharp and substantial increase in Category 340/640 imports from El Salvador is disrupting the U.S. market for men's and boys' cotton and manmade fiber woven shirts.

U.S. Production, Import Penetration, and Market Share

U.S. production and imports of men's and boys' cotton and manmade fiber woven shirts, Category 340/640, declined during the recession years 1990 and 1991. Production recovered slightly in 1992, while imports surged. In 1993, U.S. production fell 2 percent below the 1992 level and was 26 percent below the pre-recession 1989 level. In contrast, 1993 imports increased by five percent over the 1992 level, and were 19 percent above the 1989 pre-recession level.

The ratio of imports to domestic production increased from 157 percent in 1989 to 253 percent in 1993. The U.S. producer's share of the domestic market fell from 39 percent in 1989 to 28 percent in 1993, a decline of 11 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 340/640 imports from El Salvador during the year ending January 1994 entered under HTSUSA numbers

6205.20.2025—men's cotton dress shirts, other than yarn dyed;
6205.20.2065—men's woven cotton shirts, other than dress and corduroy, with one color in the warp and/or the filling; and 6205.20.2075—boys' woven cotton shirts, other than dress and corduroy, with one color in the warp and/or the filling, other than imported as a part of a playsuit. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable shirts.

[FR Doc. 94-11127 Filed 5-6-94; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: DoD FAR Supplement, Part 207, Acquisition Plans; Part 237, Service Contracting, and Part 252, Solicitation Provisions and Clauses.

Type of Request: New Collection.
Average Burden Hours/Minutes per Response: 3.25 hours.

Response per Respondent: 1.
Number of Respondents: 100.
Annual Burden Hours: 325.
Annual Responses: 100.

Needs and Uses: The Department of Defense has a requirement for continuation of contract services that have been identified as essential during crisis situations (as defined in DoD Directive 3020.37, Continuation of Essential DoD Contractor Services During Crises). If continued performance of the essential services is directed by the contracting officer during a crisis situation, the contractor agrees to continue performance of any and all essential services under the contract. If such performance causes an increase or decrease in the contractor's cost of, or the time required for performance of any part of the work under the contract, the contractor must assert its right to an equitable adjustment by submitting a written statement describing the general nature and amount of the proposal. The contracting officer shall use the contractor's assertion of its right to an adjustment as the basis for making an equitable adjustment and modifying the contract in writing.

Affected Public: Businesses and other for profit institutions, non-profit institutions and small businesses or organizations.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal may be obtained from Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: May 3, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-11000 Filed 5-6-94; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air Force

Privacy Act of 1974; Delete and amend systems of records

AGENCY: Department of the Air Force, (DoD).

ACTION: Delete and amend systems of records.

SUMMARY: The Department of the Air Force proposes to delete one and amend 14 systems of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.
DATES: The deleted system is effective May 9, 1994.

The amended systems will be effective June 8, 1994, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, SAF/AAIA, 1610 Air Force Pentagon, Washington, DC 20330-1610.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson at (703)697-3491 or DSN 227-3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force Privacy systems of records notices have been published in the **Federal Register** and are available from the address above. The deleted and amended systems are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report.

The specific changes to the systems of records being amended are set forth below, followed by the systems of records notices published in their entirety, as amended.

Dated: April 29, 1994.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

**DELETION
F200 AFIC A**

SYSTEM NAME:

DIA Program for Foreign Intelligence Collection (November 23, 1993, 58 FR 61893).

Reason: System is no longer needed. There are no plans to reinstate this system in the future. Records maintained in this system have been destroyed.

**AMENDMENTS
F033 ATC A**

SYSTEM NAME:

Lead Management System (LMS)
(February 22, 1993, 58 FR 10319).

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F033
AETC A.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150-4527.'

Air Force Opportunity Center (AFOC) (Duties of this Center are performed by a Civilian Contractor who is engaged by the Air Force to provide lead fulfillment services - location depends on the Contractor. Contact System Manager for specific locations).

Air Force recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Insert 'Education and' between the words 'Air' and 'Training.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150-4527.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150-4527.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150-4527.'

* * * * *

F033 AETC A

SYSTEM NAME:

Lead Management System (LMS).

SYSTEM LOCATION:

Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150-4527.

Air Force Opportunity Center (AFOC) (Duties of this Center are performed by a Civilian Contractor who is engaged by the Air Force to provide lead fulfillment services - location depends on the Contractor. Contact System Manager for specific locations).

Air Force recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Respondents to United States Air Force Recruiting Service advertisements and referrals made by active duty military personnel, retired military personnel and Air Force civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Respondent's inquiry record containing name, address, date of birth, sex, telephone number, advertising medium, recruiting program in which interested, and source of referral, including name and Air Force base assigned. Recruiter contact records containing success of contact efforts, reason for not contacting, how contact was made, confirmation of educational level, qualification and status of individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting campaigns, Air Education and Training Command Regulation 33-2, Recruiting Procedures for the United States Air Force.

PURPOSE(S):

The contractor fulfills requests from respondents for information about the Air Force and notifies appropriate recruiting activities of respondent's interest. Contractor develops statistical summaries which are used by USAF Recruiting Service to evaluate the effectiveness of the advertising and referral programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained by contractor at the AFOC for two years after end of FY in which all actions are completed, then records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150-4527.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150-4527.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Advertising and Promotion, Headquarters United States Air Force Recruiting Service, 550 D Street West, Suite 01, Randolph Air Force Base, TX 78150-4527.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual respondent and automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AFCC A**SYSTEM NAME:**

Scope Leader Program (February 22, 1993, 58 FR 10338).

CHANGES:**SYSTEM IDENTIFIER:**

Change system identifier to 'F035 AFC4A A.'

SYSTEM LOCATION:

Delete entry and replace with 'Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225-5233.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'Air Force Communications Command (AFCC)' and insert 'Air Force Command, Control, Communications and Computers Agency (AFC4A).'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete 'Air Force Communications Command' and insert 'Air Force Command, Control, Communications and Computers Agency.'

* * * * *

PURPOSE(S):

Delete 'Air Force Communications Command (AFCC)' and insert 'Air Force Command, Control, Communications and Computers Agency.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225-5233.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225-5233.'

Include full name, rank and Social Security Number.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225-5233.'

Include full name, rank and Social Security Number.'

* * * * *

F035 AFC4A A**SYSTEM NAME:**

Scope Leader Program.

SYSTEM LOCATION:

Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225-5233.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel, officer grade, assigned to Air Force Command, Control, Communications and Computers Agency (AFC4A).

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel selected as potential candidates for 'tough job' and commander positions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Air Force Command, Control, Communications and Computers Agency Regulation 500-16; and E.O. 9397.

PURPOSE(S):

Used to monitor the assignment and replacement of unit Commanders in Air Force Command, Control, Communications and Computers Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Maintained on computer and computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and computer system requiring user codes and passwords for access.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, macerating, burning or degaussing. Also destroyed by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225-5233.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address

inquiries to the Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225-5233.

Individual should provide full name, rank and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Assignments, Deputy Chief of Staff Personnel, Air Force Command, Control, Communications and Computers Agency, 203 West Losey Street, Room 3065, Scott Air Force Base, IL 62225-5233.

Individual should provide full name, rank and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC B

SYSTEM NAME:

Air Force Junior ROTC (AFJROTC) Applicant/Instructor System (February 22, 1993, 58 FR 10347).

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AETC B.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete 'Air Force Regulation 45-39' and insert Air Force Instruction 36-2010. Add to end of entry 'and E.O. 9397.'

* * * * *

SAFEGUARDS:

Add to end of entry 'Those in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Add to end of entry 'Computer records are destroyed by erasing, deleting or overwriting.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.'

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.'

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address. Visitors must show armed forces identification card and some additional source of positive identification.'

* * * * *

F035 AETC B

SYSTEM NAME:

Air Force Junior ROTC (AFJROTC) Applicant/Instructor System.

SYSTEM LOCATION:

Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Junior Reserve Officer Training Corps (AFJROTC) instructor applicants and instructors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for AFJROTC instructor duty, processing checklist, applicant evaluation forms, interview record, last 10 Airman Performance Reports or Officer Effectiveness Reports or summary of last 10 reports which includes period of supervision and overall evaluation, letter requesting Defense Central Index of Investigation

(DCII) name check, photograph, Report of Separation from Active Duty, Retirement Order (if applicable), Commander's recommendation (for noncommissioned officers on active duty only), miscellaneous correspondence such as resume and letter of recommendation, copy of AF retirement physical and Physical Evaluation Board Findings if applicant is retired with 30 percent or more disability awarded by VA, letter requesting medical evaluation of AFJROTC instructor applicants for personnel retired with 30 percent or more disability, letter verifying dependents, instructor preference card, instructor intent letter, contract data cards, termination letters, certification certificates, AFROTC Form 0-217, Change in AFJROTC Instructor Status, AFROTC Form 0-214, AFJROTC Instructor Contract Card, AFROTC Form 98 or 0-218, Air Force Junior ROTC Instructor Evaluation Report, letters pertaining to appeals of ratings and/or comments on AFROTC Form 98 or 0-218 and instructor termination questionnaire.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 102, Junior Reserve Officers' Training Corps; Air Force Instruction 36-2010, Air Force Junior Reserve Officers' Training Corps; and E.O. 9397.

PURPOSE(S):

Used to evaluate applicant qualifications for employment as AFJROTC instructors. Also used to determine if instructor is meeting Air Force standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, and on computer magnetic tape and computer printouts.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by erasing, deleting and overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Commander, Air Force Junior Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.

Individuals who write must furnish name, grade, Social Security Number, unit of assignment and address.

Visitors must show armed forces identification card and some additional source of positive identification.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from previous employers, financial institutions, educational institutions, police and investigating officers, the bureau of motor vehicles, a state or local government, witnesses and from source documents (such as reports) prepared on behalf of the Air Force by boards, committees, panels, auditors, and so forth.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC C**SYSTEM NAME:**

Air Force Reserve Officer Training Corps Qualifying Test Scoring System (February 22, 1993, 58 FR 10348).

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112-6110, and portions pertaining to each Air Force Reserve Officer Training Corps (AFROTC) detachment located at the respective detachments. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Air Force Human Resources Laboratory, Brooks Air Force Base, TX 78235-5601 is official repository for permanent record of all Air Force Officer Qualifying Test scores.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete 'Air Force Regulation 45-48 and insert Air Force Instruction 36-2011.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112-6110.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112-6110, or to agency officials at detachment of assignment.

Requests should include full name, Social Security Number, location of test administration, and date of testing.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine

Street, Maxwell Air Force Base, AL 36112-6110, or to agency officials at detachment of assignment.

Requests should include full name, Social Security Number, location of test administration, and date of testing.'

* * * * *

F035 ATC C**SYSTEM NAME:**

Air Force Reserve Officer Training Corps Qualifying Test Scoring System.

SYSTEM LOCATION:

Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112-6110, and portions pertaining to each AFROTC detachment located at the respective detachments. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Air Force Human Resources Laboratory, Brooks Air Force Base, TX 78235-5601 is official repository for permanent record of all Air Force Officer Qualifying Test scores.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force applicants testing at Air Force detachments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, detachment, date of test, test scores, Social Security Number, air science year, number of test administrations, institution category, race, sex, marital status, education level, and program applying for.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 103, Senior Reserve Officers' Training Corps; Military Selective Service Act of 1967, Section 6, (50 U.S.C. 456); 10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Air Force Instruction 36-2011, Air Force Reserve Officer Training Corps (AFROTC), and E.O. 9397.

PURPOSE(S):

Scores are used to evaluate applicants against criteria for entrance into AFROTC, and as a measure of quality. Scores are entered in cadet records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, visible file binders/cabinets, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number, location of test administration and date of testing.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

HQ AFROTC/RRAF will maintain records of scores attained on tests administered at AFROTC detachments for a period of four years or when no longer needed for research. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112-6110.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine Street, Maxwell Air Force Base, AL 36112-6110, or to agency officials at detachment of assignment.

Requests should include full name, Social Security Number, location of test administration, and date of testing.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Cadet Appointments and Special Actions Branch, Air Force Reserve Officer Training Corps, 20 North Pine

Street, Maxwell Air Force Base, AL 36112-6110, or to agency officials at detachment of assignment.

Requests should include full name, Social Security Number, location of test administration, and date of testing.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37-1325; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's test results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC D

SYSTEM NAME:

Basic Trainee Interview Record (February 22, 1993, 58 FR 10349).

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AETC D.'

SYSTEM LOCATION:

Delete entry and replace with 'United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236-5724.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Insert 'Education and' between the words 'Air' and 'Training.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Superintendent, United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236-5724.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Superintendent, United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236-5724.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Superintendent, United States Air Force

Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236-5724.'

F035 AETC D

SYSTEM NAME:

Basic Trainee Interview Record.

SYSTEM LOCATION:

United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236-5724.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Air Force Basic Trainees who register complaints concerning their enlistment in the United States Air Force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records resulting from personal interviews with basic trainees who file complaints about their enlistment, including, but not limited to, investigations on each complaint, conclusions and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments; Recruiting campaigns; Air Education and Training Command Regulation 33-2, Recruiting Procedures for the United States Air Force, and E.O. 9397.'

PURPOSE(S):

Provides a record of interviews with basic trainees who register complaints about the enlistment procedure. The data is used by the Recruiting Service Liaison Office to investigate the complaints and keep the Commander, United States Air Force Recruiting Service advised of the nature of complaints being received. It is also used as the basis for making procedural changes in the United States Air Force Recruiting Service when a trend develops in a specific area.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Records are cut off at the end of each calendar year in which case files are closed, held for one additional year, then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236-5724.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Superintendent, United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236-5724.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Superintendent, United States Air Force Recruiting Service Liaison Office, 900 Voyager Drive, Suite 4, Lackland Air Force Base, TX 78236-5724.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records contain specific complaints/allegations made by the individual and responses to the complaints/allegations by appropriate Air Force Recruiting Service personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC G**SYSTEM NAME:**

Recruiting Activities Management Support System (RAMSS) (February 22, 1994, 58 FR 10349).

CHANGES:**SYSTEM IDENTIFIER:**

Change system identifier to 'F035 AETC G.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527, Directorate of Recruiting, and recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.'

Request must contain full name, Social Security Number and current mailing address.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.'

Request must contain full name, Social Security Number and current mailing address.'

* * * * *

F035 AETC G**SYSTEM NAME:**

Recruiting Activities Management Support System (RAMSS).

SYSTEM LOCATION:

Headquarters United States Air Force Recruiting Service, 550 D Street West,

Randolph Air Force Base, TX 78150-4527, Directorate of Recruiting, and recruiting activities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force enlisted personnel entering active duty. Individuals tested and processed for Air Force enlistment. Potential Air Force enlistees qualified through the Armed Services Vocational Aptitude Battery (ASVAB) high school testing program. Other military services Delayed Enlistment Program (DEP) and active duty enlistees. Applicants for Air Force officer commissioning programs. Air Force enlisted personnel on recruiting duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Air Force enlistment processing records showing name, Social Security Number, scores on all qualification tests, physical job qualifications, job preferences, jobs offered, jobs accepted, other personal data relevant to jobs offered, recruiting and processing locations, education data, and dates of processing.

Airman trainee history records containing name, Social Security Number, and other personnel data for assignment from basic military training, revised job preferences, security clearance investigations, dependent data, education, test scores, grade and promotions, biographical history, physical information, drug abuse history, enlistment personal and guaranteed training enlistee program data, separation data, classification data, service dates, technical school eliminations, separations, honor graduates, and Article 15/courts-martial actions.

Records for high school seniors who are ASVAB tested and meet the basic Air Force enlistment criteria showing name, mailing address, test scores, and high school where tested.

Enlistment processing records for other military services showing Social Security Number, name, state and county of residence, test scores, educational level, physical profile, processing date and location, prior service, and other personal data such as age, sex, race, marital status, and number of dependents.

Officer applicant records showing Social Security Number, name, and other educational and personal data necessary for the processing of candidates for commissioning as Air Force Officer.

Air Force enlisted recruiter individual records showing such items as Social

Security Number, name, recruiting office assigned, and date assigned to Recruiting Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting campaigns, Air Education and Training Command Regulation 33-2, Recruiting Procedures for the United States Air Force, and E.O. 9397.

PURPOSE(S):

To furnish leads to the field recruiters derived from the high school ASVAB testing program, evaluate Air Force recruiters on effectiveness of screening out potential under/overweight applicants, evaluate recruiter's and job counselor's activity and efficiency levels, analyze pre-enlistment job cancellations for common reasons, analyze post-enlistment training pipeline attritions for common reasons, evaluate Air Force job reservation pool and past enlistments for effect of potential changes in enlistment policies in areas such as mental qualifications and physical qualifications, evaluate interservice recruiting performance, screen other service enlistees from Air Force advertising lead files, determine pass/fail rates for mental and physical testing, track training performance of Air Force enlistees, study the correlation of job held with performance on the job, study correlation of quality indicators with post-enlistment performance, feedback to field recruiters of individual records on all training attritions, and analyze advertising responses.

Used by the personnel record maintenance activity to cross-check file completeness and accuracy. Individual records are aggregated into various statistical analyses for all levels to ascertain recruiting and seasonal procurement trends, to predict future potential developments, and to assist in the development of procurement, classification, and assignment policies for Air Force military personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Enlistment processing records and recruiter records are retained until no longer needed; recruiter personnel records are retained for one year after individual is removed from recruiter production status; potential enlistee records and high school test records are retained for two years or when no longer needed, whichever is sooner; advertising lead records are retained for two years after end of FY and interservice recruiting records are retained for three months after the end of the month case file was received by the recruiter. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting. These retentions are built into the computer system program with automatic software controlled deletions from the machine-readable record.

SYSTEM MANAGER(S) AND ADDRESS:

Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.

Request must contain full name, Social Security Number and current mailing address.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this

system should address requests to the Directorate of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.

Request must contain full name, Social Security Number and current mailing address.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The source of all records in the system are from automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC H

SYSTEM NAME:

Recruiting Research and Analysis System (February 22, 1993, 58 FR 10351).

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AETC H.'

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SYSTEM LOCATION:

Delete entry and replace with 'Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.'

Social Security Number and full name are required to determine if the system contains a record relative to any specific individual. Valid proof of identity is required.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.

Social Security Number and full name are required to determine if the system contains a record relative to any specific individual. Valid proof of identity is required.'

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F035 AETC H**SYSTEM NAME:**

Recruiting Research and Analysis System.

SYSTEM LOCATION:

Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force enlisted personnel entering active duty. Individuals tested and processed for Air Force enlistment. Potential Air Force enlistees qualified through the Armed Services Vocational Aptitude Battery (ASVAB) high school testing program. Applicants for the Officer Training School. Air Force active duty officer and enlisted personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Survey analysis records containing such items as Social Security Number, biographical and opinion survey data, supervisor's ratings, achievement, aptitude, reading, vocational interest and adjustment and temperament inventory scores, Air Force tech training class score, statistics and trend analysis.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments; Recruiting campaigns, Air Education and Training Command Regulation 33-2, Recruiting Procedures for the United States Air Force, and E.O. 9397.

PURPOSE(S):

Research statistical reference file used by Headquarters United States Air Force Recruiting Service. Specific uses are to: (1) Evaluate the quality of Air Force military personnel procured by Air Force Recruiting Service; (2) develop a more objective screening process for entry into recruiting duty; and (3) develop opinion-based recommendations for recruiting effort improvements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by Social Security Number, study control number or name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are retained until no longer needed. ASVAB records are destroyed after two months. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.

Social Security Number and full name are required to determine if the system contains a record relative to any specific individual. Valid proof of identity is required.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Recruiting Operations, Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.

Social Security Number and full name are required to determine if the system contains a record relative to any specific individual. Valid proof of identity is required.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individuals, supervisors, from Air Force Technical Training Centers and from the Recruiting Activities Management Support System (RAMSS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC I**SYSTEM NAME:**

Status of Ineffective Recruiter (February 22, 1993, 58 FR 10351).

CHANGES:**SYSTEM IDENTIFIER:**

Change system identifier to 'F035 AETC I.'

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SYSTEM LOCATION:

Delete entry and replace with 'Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150-4315, and Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150-4315.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should

address inquiries to the Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150-4315.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150-4315.'

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F035 AETC I**SYSTEM NAME:**

Status of Ineffective Recruiter.

SYSTEM LOCATION:

Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150-4315, and Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty ATC enlisted and officer recruiter personnel relieved from duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual military record containing active case data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 503, Enlistments: Recruiting Campaigns, and Air Education and Training Command Regulation 33-2, Recruiting Procedures for the United States Air Force.'

PURPOSE(S):

DCS/P and USAFRS use data to monitor relief actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Stored in locked building.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cutoff, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150-4315.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150-4315.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Deputy Chief of Staff for Personnel, Headquarters Air Education and Training Command, 1851 1st Street East, Suite 1, Randolph Air Force Base, TX 78150-4315.

CONTESTING RECORD PROCEDURES:

The Air Force's rules for accessing records, and contesting contents and appealing initial determinations are published in Air Force Instruction 37-132, 32 CFR part 806b, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from source documents, such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC J**SYSTEM NAME:**

Drug Abuse Control Case Files (February 22, 1993, 58 FR 10352).

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AETC J.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Sensitive Skills Element (Special Counseling), 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Force Instruction 36-3208, Administration Separation of Airman, and Air Force Pamphlet 36-2702, Social Actions Education Program.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.'

* * * * *

F035 AETC J**SYSTEM NAME:**

Drug Abuse Control Case Files.

SYSTEM LOCATION:

Sensitive Skills Element (Special Counseling), 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty enlisted personnel and Reserve personnel referred to drug abuse office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various letters describing drug abuse information such as notification of disposition, recommendation for disposition, drug abuse determination of urinalysis cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Force Instruction 36-3208, Administration Separation of Airman, and Air Force Pamphlet 36-2702, Social Actions Education Program.

PURPOSE(S):

Discharge authority, Sensitive Skills Element (Special Counseling), and Squadron commanders determine extent of prior service drug abuse and make determinations of discharge or retention in the Air Force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record systems notices apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse, family advocacy, AIDS, or sickle cell prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-3, 290ee-3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Department of the Air Force 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for

need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cutoff, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from squadron commanders, base surgeons, classification interviewers, medical institutions and from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 ATC K**SYSTEM NAME:**

Processing and Classification of Enlistees (PACE) (February 22, 1993, 58 FR 10352).

CHANGES:**SYSTEM IDENTIFIER:**

Change system identifier to 'F035 AETC K.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Education and Training Command, 550 D Street East, Randolph Air Force Base, TX 78150-4433, input/output remote at 394

Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605, and Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Air Force Instruction 36-2108, Airman Classification. E.O. 9397.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.'

* * * * *

F035 AETC K**SYSTEM NAME:**

Processing and Classification of Enlistees (PACE).

SYSTEM LOCATION:

Headquarters Air Education and Training Command, 550 D Street East, Randolph Air Force Base, TX 78150-4433, input/output remote at 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605, and Headquarters United States Air Force Recruiting Service, 550 D Street West, Randolph Air Force Base, TX 78150-4527.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty enlisted personnel. Attached records for Air National Guard and Air Force reserve personnel attending basic military

training and the Officer Training Group. Active duty enlisted personnel attending Officer Training Group in TDY status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Airmen trainee records containing name, Social Security Number, and other personal data for assignment from basic military training, security investigation, job preferences, dependent data, education, test scores, grade and promotions, biographical history, physical data, drug abuse history, enlistment personnel and guaranteed training enlistee program data, separation information, classification data, service dates, and basic training flight, squadron, entry and graduation dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Air Force Instruction 36-2108, Airman Classification. E.O. 9397.

PURPOSE(S):

To create an initial record for the Base Level Military Personnel Data System (BLMPS); to provide Air Force Military Personnel Center (AFMPC) with initial accession information on non-prior service enlistees; provide for improved classification and assignment procedures using computer processes; provide necessary information to Joint Unit Military Pay System (JUMPS) and Lackland Entering Pay System (LEAPS) for establishment of military pay records; interface the data ring process to the maximum extent with other functional areas; and to standardize and simplify personnel processing for the 3700 Mission Support Squadron, Lackland Air Force Base, TX, so that they may more effectively control record preparation, processing, and classification actions necessary to transition civilian enlistees to military status.

Aptitude tests are administered; biographical history and job and assignment preferences are collected; and personal data is collected from enlistment records to establish a mechanized record necessary to support classification and assignment of trainees. Accession and update data is furnished through automatic interface to the advanced Personnel Data System (PDS) at AFMPC and Air Training Command, Randolph Air Force Base, TX; to JUMPS at Defense Accounting and Finance Center, Denver, CO, and to LEAPS at accounting and finance, Lackland Air Force Base, TX.

History records are furnished monthly to the Human Resources Laboratory,

Personnel Research Division (HRLPRD) Brooks Air Force Base, TX, for statistical analysis and to HQ USAF Recruiting Service/RSO, Randolph Air Force Base, TX, for use in the enlistee quality control monitoring system. Data is used to prepare forms, processing schedules, reassignment and promotion orders, classification actions, transaction and error rosters, autodid lists, and management products necessary to administer trainees while at Lackland Air Force Base, TX. Standard BLMPS products such as JUMPS transaction registers, strength balance reports, and suspense lists are prepared. Changes in basic data, promotions, reassignments, separations, and duty status changes are reported to PDS, JUMPS, and LEAPS as the action occurs. History records used at HRLPRD and the enlistee quality control monitoring system are augmented by additional data from PDS and technical training centers and are used to evaluate the quality of airmen enlisted in the USAF and the effects of changes in procurement and classification policies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records for basic trainees are retained in active file until departure from basic military training is confirmed then

transferred to history file on magnetic tape for one year. Records for Officer trainees are maintained in the active file until end of fiscal year in which they enter training and then transferred to history file on magnetic tape for one year. History file is destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Commander, 394 Personnel Processing Squadron, 2320 Carswell Ave, Suite 1, Lackland Air Force Base, TX 78236-5605.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces, from source documents such as reports, and from forms prepared during enlistment processing and completed during interviews and testing at 3731 Personnel Processing Squadron.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 ATC A

SYSTEM NAME:

Officer Training Group Resource Management System - Officer Trainees (February 22, 1993, 58 FR 10397).

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F050 AETC A.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. Chapter 907 - Schools and camps as implemented by Air Force Instruction 36-2013, Airman Commissioning Programs and Officer Training School; Air Education and Training Command Regulation 53-3, Administration of the Officer Training School (OTS) Program, and E.O. 9397.'

F050 AETC A**SYSTEM NAME:**

Officer Training Group (OTG)
Resource Management System - Officer Trainees.

SYSTEM LOCATION:

3700 Officer Training Group,
Lackland Air Force Base, TX 78236-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officer trainees while attending OTG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer trainee record showing name, Social Security Number; demographic data such as college degree, major institution, and year awarded; OTG selection data such as Air Force Officer Qualifying Test scores; performance data such as test scores, measurement evaluation, merits and demerits earned, involvement in remedial programs; health data to include height, weight aerobic program requirements and performance; injuries that require waivers to training or delay of commissioning; student disposition indicators showing in-training, eliminated, recycled, holdover or graduated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 907 - Schools and camps as implemented by Air Force Instruction 36-2013, Airman Commissioning Programs and Officer Training School; Air Education and Training Command Regulation 53-3, Administration of the Officer Training School (OTS) Program, and E.O. 9397.

PURPOSE(S):

To track attrition to the OTG program by cause and type comparing that against demographic and performance data of the individual, and to monitor the progress of an individual toward completion of the program. Records may be grouped by class, squadron, flight, a demographic or performance factor in the accomplishment of evaluations of the program or the individual in relation to peers. Studies, analyses, and evaluations that use these records are

intended to improve the quality of the training program, and develop a more accurate profile of those individuals who can be expected to accomplish the OTG program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored on magnetic tape, disk units, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are retained for two years after class graduation then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, 3700 Officer Training Group (OTG/MT), Lackland Air Force Base, TX 78236-5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to or visit the Registrar, 3700 Officer Training Group (OTG/MT), Lackland Air Force Base, TX 78236-5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests

to or visit the Registrar, 3700 Officer Training Group (OTG/MT), Lackland Air Force Base, TX 78236-5000.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, flight commanders, OTG instructors, personnel specialists and members of the registrar's office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 ATC B**SYSTEM NAME:**

Community College of the Air Force Student Record System (February 22, 1993, 58 FR 10398).

CHANGES:**SYSTEM IDENTIFIER:**

Change system identifier to 'F050 AETC B.'

SYSTEM LOCATION:

Delete entry and replace with 'The system is centrally administered by the Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6307. Computer processing for the system is performed by the Systems Development Branch.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 9315, Community College of the Air Force: Associate degree; Air Force Instruction 36-2304, Community College of the Air Force, and E.O. 9397.'

SAFEGUARDS:

Add to end of entry 'Those in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Add to end of entry 'Computer records are destroyed by erasing, deleting or overwriting.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'President, Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6307.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Persons who have not registered in the college should address inquiries regarding records maintained by the college to Chief, Student Records Branch, Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6307. Persons who have registered in the college may address inquiries as above or to Chief, Academic Programs Division also at Maxwell Air Force Base. Such inquiries will need to include the full name (and former names if appropriate), Social Security Number, and birth date of the inquirer, and should include a full return address (including ZIP Code). Visits to the college are welcomed, and visitors seeking information about personal records should first visit the Office of the Registrar.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the System Manager, or to addresses listed above.

Visits to the college are welcomed, and visitors seeking information about personal records should first visit the Office of the Registrar.'

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F050 AETC B**SYSTEM NAME:**

Community College of the Air Force Student Record System.

SYSTEM LOCATION:

The system is centrally administered by the Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6307. Computer processing for the system is performed by the Systems Development Branch.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system may have a record for any person who since January 1, 1968 has completed a formal course of instruction conducted by one of the Air Force schools identified in the current Community College of the Air Force General Catalog. Such courses do not include pre-commissioning courses and courses conducted exclusively for officers or their civilian counterparts. The system includes records reflecting Air Force courses completed before 1968 and other educational accomplishments for persons who as enlisted members of the Air Force registered in programs of study leading to credentials awarded by the college.

Both here and where appropriate below, the general term Air Force includes the regular Air Force, the Air Force Reserve, and the Air National Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual academic records and, where necessary to serve airmen registered in study programs leading to credentials awarded by the college, a variety of source or substantiating records such as copies of registration applications and document control records derived from such applications, civilian college transcripts, college level examination program score reports; copies of educational records originated by other Air Force and non-Air Force agencies external to the college (such as the Federal Aviation Agency, the United States Armed Forces Institute, and the Defense Activity for Non-traditional Education Support), copies of a variety of Air Force personnel records (such as documents derived from master records maintained by the Air Force Manpower and Personnel Center and microfiche records of locator data); and records of credentials awarded to graduates. The college also maintains copies and related records of communications from, to, or regarding persons interested in the college, its educational programs, its student record system, and related matters. Copies of and statistical records derived from individual responses to surveys, questionnaires, and similar instruments authorized by HQ USAF may also be maintained as needed for managerial evaluation and planning by officers of the college.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 9315, Community College of the Air Force; Associate degree; Air Force Instruction 36-2304, Community College of the Air Force, and E.O. 9397.

PURPOSE(S):

Records originated in the system document, in terms of credit awarded or accepted in transfer by the college, individual educational accomplishments which satisfy curricular requirements of study programs leading to an Associate in Applied Science degree offered by the college. Transcripts of records in the college are, at the written request of persons concerned, furnished to any recipient(s) designated in such requests. Such recipients typically include Air Force Education Services Centers, other offices where Air Force personnel are stationed, educational institutions, and potential or current employers. CCAF transcripts and copies of other records originated in the college are also used to support educational and occupational

counseling, planning, and development; admission to other colleges; and related individual affairs. Disclosures of information recorded in the system may be made to employees of civilian contractors engaged by the Air Force to provide services which directly or indirectly support the record system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Permanent student computer records are maintained on and as necessary reproduced from magnetic media. Paper records are maintained in file folders, card files, and special binders/cabinets designed for computer listings.

RETRIEVABILITY:

Computer records are retrievable by a combination of Social Security Number and certain letters of last name. Paper records are retrievable by either Social Security Number or name.

SAFEGUARDS:

Records maintained in the college are normally disclosed only upon written request from the subject of the records or upon written request from an Air Force officer or employee responsible to provide educational or related services to Air Force personnel. Disclosures to non-Air Force agencies not requested by the subject of the records require approval of an officer of the college. Except for disclosures within the college as may be necessary to its operations, requests by telephone and other unwritten means will not be honored unless in the judgment of a responsible member of the college staff the requester is a member or employee of the Air Force acting on behalf of, or is, the person whose record is requested. Special care is exercised to ensure complete identification of the requester, the person whose record is to be disclosed, and intended use. Other systematic safeguards to ensure integrity of records include secure storage of

successive generations of computer master files, existence and long-term retention in other Air Force facilities of records needed to rebuild the entire system in the event of catastrophe, and traditional measures to ensure the security of Air Force facilities. All records in the system are attended by responsible Air Force personnel during duty hours and stored in locked facilities under constant or periodic surveillance by Air Force security police during non-duty hours. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference. Specific rules for retention of permanent microfiche have not yet been determined. It is anticipated that such records may need to be retained for not less than 30 and not more than 50 years beyond the latest entries on each such record. Active master file records on the computer are by their nature evolutionary and will be maintained permanently. Paper records maintained to serve students registered in study programs are retained so long as a registrant remains active in his or her program. Such records are destroyed 1 year after a registrant completes his or her study program. Other records are typically retained only so long as they may serve a useful purpose, which is typically between 30 and 90 days. No rule has yet been defined for retaining records which verify awards of credentials by the college, but it is expected that such records will need to be archival. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

President, Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6307.

NOTIFICATION PROCEDURE:

Persons who have not registered in the college should address inquiries regarding records maintained by the college to Chief, Student Records Branch, Community College of the Air Force, 130 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6307. Persons who have registered in the college may address inquiries as above or to Chief, Academic Programs Division also at Maxwell Air Force Base. Such inquiries will need to include the full name (and former names if appropriate), Social Security Number, and birth date of the inquirer, and should include a full return address

(including ZIP Code). Visits to the college are welcomed, and visitors seeking information about personal records should first visit the Office of the Registrar.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the System Manager, or to addresses listed above.

Visits to the college are welcomed, and visitors seeking information about personal records should first visit the Office of the Registrar.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from educational institutions, automated system interfaces and from source documents submitted to the college by or at the request of individuals concerned, or by other Air Force agencies acting on behalf of individuals concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 ATC I

SYSTEM NAME:

Defense English Language Management Information System (DELMIS) (February 22, 1993, 58 FR 10399).

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F050 AETC I.'

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SYSTEM LOCATION:

Delete entry and replace with 'Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236-5231.'

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 16-103/OPNAVINST 1550.11/MCO 1550.24, Management of the Defense English Language Program; and E.O. 9397.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236-5231.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236-5231.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236-5231.'

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F050 AETC I

SYSTEM NAME:

Defense English Language Management Information System (DELMIS).

SYSTEM LOCATION:

Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236-5231.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

International Military Students (IMS) and active duty military personnel assigned to the program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and Social Security Number; demographic data such as date of birth, sex, marital status, ethnic group; educational data; performance data such as test scores; measurement data; individual training progress and proficiency; class schedule; locator, and academic status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 16-103/OPNAVINST 1550.11/MCO 1550.24, Management of the Defense English Language Program; and E.O. 9397.

PURPOSE(S):

To track attrition of the program by cause and type, and to compare that

against demographic and performance data of the individual, and to monitor the progress of each individual toward completion of the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in computer and computer output products.

RETRIEVABILITY:

Retrieved by name or student control number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software. Access to the computer system requires user code and password.

RETENTION AND DISPOSAL:

Output products are retained until no longer needed; computerized records will be retained for ten years after individual completes or discontinues training. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236-5231.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236-5231.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Operations Branch, Defense Language Institute English Language Center, 1370 Selfridge Avenue, Lackland Air Force Base, TX 78236-5231.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, source documents, commanders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F177 ATC A

SYSTEM NAME:

Air Force Reserve Officer Training Corps Cadet Pay System (February 22, 1993, 58 FR 10495).

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F177 AETC A.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Air Force Reserve Officer Training Corps (AFROTC), 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110, and AFROTC detachments. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force; powers and duties, delegation by; 37 U.S.C. 209, Members of Senior Reserve Officers' Training Corps, and E.O. 9397.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Comptroller of the Air Force, Headquarters United States Air Force, 1450 Air Force Pentagon, Washington, DC 20330-1450, and Director of Financial Management, AFROTC, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Accounting and Finance Division, HQ AFROTC, Maxwell Air Force Base, AL 36112-6334.

Provide name, date attended the institution, detachment number, reason for request. Requester may visit HQ AFROTC, and must present driver's license or Social Security card.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address requests to the Accounting and Finance Division, HQ AFROTC, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.

Provide name, date attended the institution, detachment number, reason for request. Requester may visit HQ AFROTC, and must present driver's license or Social Security card.'

* * * * *

F177 AETC A

SYSTEM NAME:

Air Force ROTC Cadet Pay System.

SYSTEM LOCATION:

Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110, and Air Force Reserve Officer Training Corps (AFROTC) detachments. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Senior AFROTC contract cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

Monthly pay disbursement and documents for senior AFROTC contract cadets.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; powers and duties, delegation by; 37 U.S.C. 209, Members of Senior Reserve Officers' Training Corps, and E.O. 9397.

PURPOSE(S):

Used by detachments to verify entitlements, and by AFROTC to summarize costs of the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer magnetic tapes and on computer paper printouts.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are controlled by computer system software. Building secured after duty hours.

RETENTION AND DISPOSAL:

Retained in office file for three years after completion of training, then destroyed by tearing, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller of the Air Force, Headquarters United States Air Force, 1450 Air Force Pentagon, Washington, DC 20330-1450, and Director of Financial Management, Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Accounting and Finance Division, Headquarters Air Force Reserve Officer Training Corps, Maxwell Air Force Base, AL 36112-6334.

Provide name, date attended the institution, detachment number, reason for request. Requester may visit HQ AFOTC, and must present driver's license or Social Security card.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Accounting and Finance Division,

Headquarters Air Force Reserve Officer Training Corps, 551 East Maxwell Boulevard, Maxwell Air Force Base, AL 36112-6110.

Provide name, date attended the institution, detachment number, reason for request. Requester may visit HQ AFOTC, and must present driver's license or Social Security card.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Enrollment and attendance records as translated to pay days.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.
[FR Doc. 94-11149 Filed 5-6-94; 8:45 am]
BILLING CODE 5000-04-F

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 25 May 1994.
Time of Meeting: 0830-1700.
Place: Hughes Aircraft Company, Tucson, AZ.

Agenda: The Army Science Board's Independent Assessment Panel on "Missile Shelf Life" will meet for discussions with members of the management and engineering staff of Hughes Aircraft Company to see how the company responds to missile shelf requirements for Army, Navy and Air Force Programs. Cost and benefit trade-offs for various shelf life activities will be discussed, as well as corporate positions on the use of commercial components, missile specifications, and critical technologies. 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 classified and 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, may be contacted for further information at (703) 695-0781.

Herbert J. Gallagher,
COL, GS, Executive Secretary.
[FR Doc. 94-11095 Filed 5-6-94; 8:45 am]
BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 24-25 May 1994.
Time of Meeting: 0800-1700, 0800-1500 (classified).

Place: MPRI, Alexandria, VA.
Agenda: The Threat Team II of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to hear briefings on and discuss advanced and novel technology forecasts, operational enhancements and future force structure/doctrinal implications. The 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.

Herbert J. Gallagher,
COL, GS, Executive Secretary.
[FR Doc. 94-11096 Filed 5-6-94; 8:45 am]
BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 26-27 May 1994.
Time of Meeting: 0900-1700.

Place: Army Research Lab, Adelphi, MD, CECOM Night Vision & Electronic Sensors, Directorate, Ft. Belvoir, VA.

Agenda: The Army Science Board's Ad Hoc Study on "Aided Target Recognition (ATR)" will meet to review military aided target acquisition projects and results. 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 classified and 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, may be contacted for further information at (703) 695-0781.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 94-11089 Filed 5-6-94; 8:45 am]
BILLING CODE 3710-08-M

Department of the Navy**Board of Advisors to the President;
Naval War College; Newport, Rhode
Island; Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App 2), notice is given that the Board of Advisors to the President, Naval War College, will meet on May 18-19, 1994, in room 210, Conolly Hall, Naval War College, 686 Cushing Road, Newport, Rhode Island. The first session will commence at 8:30 a.m. and terminate at 5:30 p.m. on May 18; and the second session will commence at 8:30 a.m. and terminate at approximately 12 p.m. on May 19. The purpose of the meeting is to elicit the advice of the Board on educational, doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs, and plans of the College, and all sessions of the meeting will be open to the public.

For further information contact: Mrs. Mary E. Estabrooks, Assistant to the Dean of Academics, Naval War College, 686 Cushing Road, Newport, RI 02841-1207, Telephone number (401) 841-3589.

Dated: April 26, 1994

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94-11136 Filed 5-6-94; 8:45 am]

BILLING CODE 3810-AE-F

**Electronic Data Systems Corp.; Intent
To Grant Partially Exclusive Patent
License**

AGENCY: Department of the Navy, DoD.

ACTION: Intent to grant partially exclusive patent license; Electronic Data Systems Corporation.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant Electronic Data Systems Corporation a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned invention described in U.S. Patent Application Serial No. 07/473,258 entitled "Selective Polygon Map Display Method" filed January 31, 1990.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217-5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217-5660, telephone (703) 696-4001.

Dated: April 28, 1994.

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94-11114 Filed 5-6-94; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION**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 8, 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) provides 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: May 3, 1994

Wallace McPherson,

Acting Director, Information Resources Management Service.

Office for Civil Rights

Type of Review: Reinstatement

Title: Fall 1994 Elementary and Secondary School Civil Rights Compliance Report

Frequency: Biennially

Affected Public: State or local governments

Reporting Burden:

Responses: 49,900

Burden Hours: 399,200

Recordkeeping Burden:

Recordkeepers: 90,000

Burden Hours: 90,000

Abstract: This survey will collect information from public school districts for determining compliance with applicable civil rights laws. The Department will use this data in identifying sites for compliance reviews and tracking trends and issues related to civil rights compliance.

Office of Postsecondary Education

Type of Review: Revision

Title: Application for the Comprehensive Program of the Fund for the Improvement of Postsecondary Education

Frequency: Annually

Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations

Reporting Burden:

Responses: 2,275

Burden Hours: 27,150

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This form will be used by State Educational agencies to apply

for funding under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education. The Department will use the information to make grant awards.

[FR Doc. 94-11010 Filed 5-6-94; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Closed Teleconference Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of closed teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: June 1, 1994.

TIME: 11 a.m. (edt).

LOCATION: 800 North Capitol Street NW., suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Office, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC, 20002-4233, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under Section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 U.S.C. 1221e-1).

The Board is established to formulate policy guidelines for the national Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On June 1, 1994, the Executive Committee of the National Assessment Governing Board will meet in a closed teleconference meeting to review and discuss the performance of the NAGB excepted-appointment staff in their respective positions. The review and subsequent discussion will relate solely to the internal rules and practices of an

agency and disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of this closed teleconference and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: May 3, 1994.

Roy Truby,

Executive Director.

[FR Doc. 94-11011 Filed 5-6-94; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94-1180-000, et al.]

Idaho Power Co., et al.; Electric Rate and Corporate Regulation Filings

May 2, 1994.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Co.

[Docket No. ER94-1180-000]

Take notice that on April 25 1994, Idaho Power Company tendered for filing two agreements with the Bonneville Power Administration. The first is a modification which would extend the term of the Idaho Water Rental Pilot Project. The second is an offer of storage services by Bonneville Power. Idaho Power has requested an effective date for both agreements of not more than 60 days from the date of filing.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Services, Inc.

[Docket No. ER94-1182-000]

Take notice that Entergy Services, Inc. (Entergy Services), acting as agent for Louisiana Power & Light Company (LP&L), on April 26, 1994, tendered for filing a revised appendix B to the Electric System Interconnection Agreement Between Cajun Electric

Power Cooperative, Inc. (Cajun) and LP&L, which provides for the identification of Delivery Points thereunder. Entergy Services requests waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the revised appendix A to be made effective January 1, 1994.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER94-1183-000]

Take notice that Entergy Services, Inc. (Entergy Services), acting as agent for Louisiana Power & Light Company (LP&L), on April 26, 1994, tendered for filing a revised appendix A to the Electric System Interconnection Agreement Between Louisiana Energy and Power Authority (LEPA) and LP&L, which provides for identification of Delivery Points thereunder. Entergy Services requests waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the revised appendix A to be made effective January 1, 1994.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Southwestern Public Service Co.

[Docket No. ER94-1184-000]

Take notice that on Southwestern Public Service Company (Southwestern) on April 26, 1994, tendered for filing a proposed amendment to the Agreement for Wholesale Full Requirements Electric Power Service to Cap Rock Electric Power Service to Cap Rock Electric Cooperative, Inc. (Cap Rock).

The amendment reflects an increase in the maximum commitment of the Vealmoor delivery point from 100,000 KVA to 115,000 KVA to accommodate Cap Rock's increased load requirements. No rate change is being proposed in the filing.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER94-1185-000]

Take notice that PacifiCorp, on April 26, 1994, tendered for filing, the final draft of the AC Intertie Operation and Maintenance Agreement (O&M Agreement) between PacifiCorp and Bonneville Power Administration (Bonneville), Contract No. DE-MS79-93BP94278.

The O&M Agreement provides for the operation and maintenance of jointly owned facilities which are part of the AC Intertie.

PacifiCorp respectfully requests that the Commission grant a waiver of prior notice, and that an effective date of December 7, 1993 be assigned.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Louis Dreyfus Electric Power Inc.

[Docket No. ER92-850-003]

Take notice that on April 25, 1994, Louis Dreyfus Electric Power, Inc. (Dreyfus) filed an amendment to its informational filing for the quarter ended March 31, 1994, containing certain information required by the Commission's December 2, 1992 letter order in this proceeding. 61 FERC ¶ 61,303 (1992). Copies of Dreyfus' informational filing are on file with the Commission and are available for public inspection.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11037 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. JD94-05836T Oklahoma-84]

United States Department of the Interior, Bureau of Land Management; NGPA Determination by Jurisdictional Agency Denying Designation of Tight Formation

May 3, 1994

Take notice that on April 22, 1994, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's

regulations, that the Sycamore, Woodford, Hunton, Viola, and Deep Bromide Formations, underlying portions of Garvin and Stephens Counties, in Oklahoma, do not qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The subject area consists of the Indian lands portion of the NW/4 of Section 14, in T2S, R4W, in Stephens County, and the Indian lands portion of the SE/4 of Section 3, in T2N, R2W, in Garvin County, Oklahoma.

The notice of determination also contains the BLM's findings that the referenced portions of these formations do not meet the requirements of the Commission's regulations, as set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11052 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD94-05843T Oklahoma-81; Docket No. JD94-05844T Oklahoma-82; Docket No. JD94-05845T Oklahoma-83]

State of Oklahoma; NGPA Determination by Jurisdictional Agency Designating Tight Formation

May 3, 1994.

Take notice that on April 22, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notices of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore, Hunton, and Viola Formations, underlying portions of McClain and Grady Counties, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The Oklahoma-81 recommended area consists of all of Section 25 and the E/2 of section 26, in T5N, R4W, in McClain County, Oklahoma. The Oklahoma-82 recommended area consists of all of Section 29, in T5N, R4W, in McClain County, Oklahoma. The Oklahoma-83 recommended area consists of all of Section 34, in T5N, R6W, in Grady County, Oklahoma.

The notices of determination also contain Oklahoma's findings that the

referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for these determinations is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell

Secretary.

[FR Doc. 94-11053 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD94-05842T Oklahoma-80]

State of Oklahoma; NGPA Determination By Jurisdictional Agency Designating Tight Formation

May 3, 1994.

Take notice that on April 22, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore, Woodford, Hunton, and Viola Formations, underlying a portion of Stephens County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area consists of the State and/or private lands portion of the NW/4 of section 14, in T2S, R4W, in Stephens County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11054 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD94-05841T Oklahoma-79]

**State of Oklahoma; NGPA
Determination by Jurisdictional
Agency Designating Tight Formation**

May 3, 1994.

Take notice that on April 22, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore, Woodford, Hunton, Viola and Deep Bromide Formations, underlying a portion of Garvin County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area consists of the NE/4 of section 5, in T1N, R3W, in Garvin County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11055 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD94-05840T Oklahoma-78]

**State of Oklahoma; NGPA
Determination by Jurisdictional
Agency Designating Tight Formation**

May 3, 1994.

Take notice that on April 22, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore, Woodford, Hunton and Viola Formations, underlying a portion of Garvin County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area consists of the State and/or private lands portion of the SE/4 of section 3, the NE/4 of section 10, and the NW/4 of section 11, in T2N, R2W, in Garvin County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the

referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11056 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD94-05837T Oklahoma-75]

**State of Oklahoma; NGPA
Determination by Jurisdictional
Agency Designating Tight Formation**

May 3, 1994.

Take notice that on April 22, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Cleveland-Jones Formation, underlying a portion of Oklahoma County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area consists of the SE/4 of section 10, and the SW/4 of section 11, in T14N, R1W, in Oklahoma County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11058 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-221-000]

**ANR Pipeline Co.; Proposed Changes
in FERC Gas Tariff**

May 3, 1994.

Take notice that on April 29, 1994, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Third Revised Sheet No. 9
Third Revised Sheet No. 13
Third Revised Sheet No. 16
Third Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to commence recovery of \$8.1 million of gas supply realignment ("GSR") costs that have been incurred by ANR as a result of the implementation of Order Nos. 636, et seq. ANR proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the GSR costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS shippers to recover the remaining ten percent (10%). ANR has requested that the Commission accept the tendered sheets to become effective June 1, 1994.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the 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, 385.214). All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11040 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-43-000]

**ANR Pipeline Co.; Motion to Place
Rates into Effect**

May 3, 1994.

Take notice that on April 29, 1994, ANR Pipeline Company (ANR) filed a Motion To Place Rates And Tariff Sheets

In Effect On May 1, 1994. By its motion, ANR places into effect, on May 1, 1994, rates and revised tariff sheets to ANR's Second Revised Volume No. 1 and Original Volume No. 2 FERC Gas Tariffs, which rates and revised tariff sheets were filed by ANR on April 7, 1994, in compliance with the Commission's March 23, 1994, "Order Granting and Denying Summary Disposition and Establishing Hearing Procedures." Copies of the revised tariff sheets being moved into effect were appended to ANR's motion.

ANR states that all persons designated on the Restricted Service List that has been established by the Presiding Administrative Law Judge in this proceeding have been served with this filing (other than the previously served tariff sheets) via U.S. Mail.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 94-11050 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-170-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 28, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet: Original Sheet No. 97A

The proposed effective date of the tariff sheet is April 1, 1994.

Algonquin states that the purpose of this filing is to revise the sheet number of the tariff sheet submitted in Algonquin's filing dated April 14, 1994 in Docket No. RP94-170-001. Algonquin states that there is no change in rate.

Algonquin states that copies of this filing were served upon each affected party and interested state commissions and parties on the service list in Docket No. RP94-170-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11047 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-223-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994

Take notice that on April 29, 1994, Colorado Interstate Gas Company (CIG) submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets identified below:

Primary Tariff Sheets

First Revised Sheet No. 343

Original Sheet No. 343A

Original Sheet No. 343B

Original Sheet No. 343C

Original Sheet No. 343D

Original Sheet No. 343E

Alternate Tariff Sheets

Second Revised Sheet No. 7

Second Revised Sheet No. 8

Fourth Revised Sheet No. 11

Alternate First Revised Sheet No. 343

Alternate Original Sheet No. 343A

Alternate Original Sheet No. 343B

Alternate Original Sheet No. 343C

Alternate Original Sheet No. 343D

CIG states that the purpose of these revised tariff sheets is to establish a tracking mechanism to recover certain stranded Account No. 858 costs associated with CIG's capacity on Overthrust Pipeline Company and Canyon Creek Compression Company.

By the identified Primary sheets CIG proposes to track changes from a representative level of approximately \$2.1 million which are already included in its "base rates" in Docket No. RP93-99. By the Alternative sheets CIG is proposing to recover all of such costs via a tracker and to make a downward adjustment in the presently effective (subject to refund) rates in Docket No. RP93-99. The tracker under both the primary and the alternative proposals

will utilize a fixed-rate surcharge to recover the tracked costs. Such surcharge will apply to all customers under CIG's Rate Schedules NNT-1, NNT-2, TF-1 and TF-2.

CIG requests waiver of all requirements so as to allow these proposed tariff sheets be made effective on May 1, 1994.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11039 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-219-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A attached to the filing.

Columbia Gulf states that the instant filing (a) implements a general rate increase under Section 4 of the Natural Gas Act in order to permit recovery of increased costs, in part caused by increased operation and maintenance expense and construction since the last Section 4 general rate proceeding, (b) implements other changes in the cost of service, throughput and demand billing determinants through the end of the test period, and (c) proposes certain other tariff changes. According to Columbia Gulf, in large measure, this filing is being made as a result of the termination of the T-1 Rate Schedule service agreement by Columbia Gas

Transmission Corporation (Columbia) effective as of October 31, 1994 and pending abandonment of that service by Columbia Gulf. As a result of such termination and abandonment, Columbia Gulf will no longer have a cost of service tariff on and after November 1, 1994.

Columbia Gulf states that the tariff sheets identified in Appendix A bear an issue date of April 29, 1994. Columbia Gulf requests a waiver of the Commission's regulations to permit an effective date of November 1, 1994, for these tariff sheets.

Columbia Gulf states that the tariff sheets submitted with this filing reflect the following primary elements: (1) Revised non-gas transportation service rates based upon a cost of service for the 12 months ended January 31, 1994, adjusted for known and measurable changes anticipated to occur on or before October 31, 1994; (2) revised depreciation rates; (3) the assignment of Administrative and General costs to the various rate zones based on a combination of labor and revenues; (4) a representative level of revenue attributable to discounted transportation; (5) revisions of the ITS revenue crediting mechanism to (a) adjust the revenues to be shared for any actual inflation experienced during the applicable year, and (b) withhold revenue credits from delinquent customers or firm customers which dispute their bills subject to reversal in the event the dispute is resolved in such customer's favor; (6) a tariff revision to provide for an adjustment to rates to account for the completion of the flow-back of excess deferred income taxes under the Reverse South Georgia methodology; and (7) revisions to certain Volume No. 2 tariff changes to correct page references to the retainage factor in the Second Revised Volume No. 1 tariff.

Columbia Gulf states that its proposed rates result in approximately \$23 million of additional revenue annually compared to the underlying rates in Docket No. RP92-2 which became effective April 1, 1992.

Columbia Gulf states that a copy of the filing is being served on all parties to this proceeding, jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94-11042 Filed 5-6-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP94-217-000]

**Florida Gas Transmission Co.;
Proposed Changes in FERC Gas Tariff**

May 3, 1994.

Take notice that on April 28, 1994 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of June 1, 1994:

Second Revised Sheet No. 42
Second Revised Sheet No. 43
First Revised Sheet No. 499
First Revised Sheet No. 501
First Revised Sheet No. 502
First Revised Sheet No. 503
First Revised Sheet No. 508
Second Revised Sheet No. 509

FGT states that its pre-636 FERC Gas Tariff provided for the scheduling of deliveries under Rate Schedule ITS-1 on a first-come, first-served basis predicated on priority dates established at the time service was requested. Any modifications requested to delivery points altered the priority date assigned to a contract. Under the current terms of FGT's FERC Gas Tariff, Third Revised Volume No. 1, the scheduling of deliveries under Rate Schedule ITS-1 is based on economics with the highest price paid scheduled first. However, FGT's currently effective tariff necessitates that an IT Shipper specify the delivery points desired and that Exhibit A to the Shipper's service agreement be amended if the Shipper wishes to modify its delivery points. FGT states this is not consistent with the nature of service anticipated by Order No. 636.

FGT states that the instant filing proposes changes that render Rate Schedule ITS-1 an interruptible transportation service which can be used for delivery to all delivery points in FGT's Market Area or to all delivery points in FGT's Western Division,

depending on whether the service agreement is for Market Area or Western Division service. FGT states that this enhancement facilitates the allocation of capacity and eliminates unnecessary administrative burden. In addition, certain other minor tariff changes have been made simply for clarification purposes.

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 §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94-11044 Filed 5-6-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP94-216-000]

**Florida Gas Transmission Co.;
Transition Cost Recovery Report**

May 3, 1994.

Take notice that on April 28, 1994 Florida Gas Transmission Company (FGT) tendered for filing a Transition Cost Recovery Report pursuant to Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, approved by the Commission's September 17, 1993 Order in Docket No. RS92-16, et al.

FGT states that the Transition Cost Recovery Report filed summarizes the activity which has occurred in its TCR Account and Order 636 Account through April 30, 1994 and includes \$23,364,011 of recoverable transition costs not previously reported. Because the currently effective surcharge rates are at the maximum levels permitted by FGT's tariff, no tariff revisions are required as a result of this filing.

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 §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before

May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94-11045 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-80-002]

**National Fuel Gas Supply Corp;
Proposed Changes in FERC Gas Tariff**

May 3, 1994.

Take notice that on April 26, 1994, National Fuel Gas Supply Corporation (National Fuel) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, proposed to be effective February 1, 1994:

Sub. First Revised Sheet No. 133
Sub. Original Sheet No. 133-A
Sub. Original Sheet No. 133-B

National Fuel states that such tariff sheets are being submitted to add a Hub in the above-captioned Docket.

National Fuel states that the application avers that it has come to National Fuel's attention that First Revised Sheets No. 133 and Original Sheet Nos. 133-A and 133-B inadvertently omitted pertinent information. Specifically, that based on operational experience, the originally submitted tariff sheets failed to designate a sufficient number of locations for potential shippers to nominate both receipt and delivery points on their nominations form.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94-11049 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP94-179-001 and RP94-86-001]

**Natural Gas Pipeline Co. of America;
Proposed Changes in FERC Gas Tariff**

May 3, 1994.

Take notice that on April 29, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 317, to be effective April 1, 1994.

Natural states that the purpose of the filing is to comply with the Commission's "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions and Granting Waiver," issued April 14, 1994 in these dockets. The filing relates to Natural's mechanism for recovery of Account No. 858 costs.

Natural requested specific waivers of Section 21 of its Tariff and the Commission's Regulations, including the requirements of § 154.63, to the extent necessary to permit the tariff sheet to become effective April 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 94-11046 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-220-000]

Northwest Pipeline Corp.; Changes in FERC Gas Tariff

May 3, 1994

Take notice that on April 29, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing changes to its FERC Gas Tariff to be effective June 1, 1994, consisting of the following tariff sheets:

Primary Tariff Sheets

Third Revised Volume No. 1

Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 5-A
Second Revised Sheet No. 6
Second Revised Sheet No. 7
Fourth Revised Sheet No. 8
First Revised Sheet No. 8.1
Second Revised Sheet No. 10C
First Revised Sheet No. 104
First Revised Sheet No. 105
First Revised Sheet No. 117
Second Revised Sheet No. 200
First Revised Sheet No. 269
First Revised Sheet No. 270
Second Revised Sheet No. 271
First Revised Sheet No. 272
Second Revised Sheet No. 273
Original Sheet No. 273-A
Original Sheet No. 273-B

Original Volume No. 2

Eighteenth Revised Sheet No. 2
Twelfth Revised Sheet No. 2.1
Eighteenth Revised Sheet No. 2-A

Pro Forma Tariff Sheets

Third Revised Volume No. 1

Pro Forma Sheet No. 375
Pro Forma Sheet No. 376
Pro Forma Sheet No. 377
Pro Forma Sheet No. 378
Pro Forma Sheet No. 379
Pro Forma Sheet No. 380

Northwest states that the changes reflect an overall change in its jurisdictional rates for the twelve months ended January 31, 1994, adjusted for known and measurable changes through October 31, 1994, to provide additional revenues related to an increased revenue requirement and redesign of rates of approximately \$22.5 million.

Northwest further states that the increase in jurisdictional rates reflected in its filing is necessary to permit Northwest the opportunity to recover its revenue requirements due to increased costs of operating its system primarily because of capital additions and to provide for the redesign of rates based on reduced contract demand resulting from the expiration of a firm transportation contract.

Northwest's filing includes various other minor changes to its tariffs to provide for: (1) A change to the interruptible cost allocation amount applicable to interruptible revenue crediting procedures, (2) modification to the annual contract quantity tariff provisions applicable to Rate Schedule TF-2, (3) a clarification to the Rate Schedule T-1 Btu/Mcf conversion factor which is applicable to that service's Daily Transportation Contract Quantity, and (4) a provision whereby Northwest will credit to firm transportation shippers any revenues it receives under discounted contracts over and above the

amount credited to cost of service in rate design.

Northwest also submitted with the filing a pro forma index of Shippers to illustrate the contracts and services which are expected to be effective at the time when the new rates become effective.

Northwest states that this filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission Regulations.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 94-11041 Filed 5-6-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP93-5-023]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 28, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets with a proposed effective date of April 1, 1994:

Third Revised Volume No. 1

Substitute Third Revised Sheet No. 5
Substitute Third Revised Sheet No. 5-A
Substitute Third Revised Sheet No. 8
Substitute Original Sheet No. 100
Substitute First Revised Sheet No. 375
Second Substitute First Revised Sheet No. 376
Substitute First Revised Sheet No. 377
Substitute First Revised Sheet No. 378
Substitute Original Sheet No. 380

Original Volume No. 2

Substitute Eleventh Revised Sheet No. 2.1
Substitute First Revised Sheet Nos. 1187 through 1189
Substitute Second Revised Sheet Nos. 1190 and 1191
Substitute First Revised Sheet No. 1192
Substitute Third Revised Sheet No. 1193

Northwest states that the purpose of this filing is to comply with the Commission's directives in the Order Accepting Tariff Sheets Subject to Conditions, dated April 6, 1994, in Docket Nos. RP93-5-021 and -022 to change certain rates and the Index of Shippers as a result of revised billing determinants and to correct certain typographical errors. In addition, Northwest states that it is updating the Index of Shippers.

Northwest states that a copy of this filing has been served upon all intervenors in Docket Nos. RP93-5-021 and -022, Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,
Secretary.

[FR Doc. 94-11051 Filed 5-6-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP94-218-000]

Pacific Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, Original Sheet No. 6D, to set forth the amount to be refunded as a result of the closeout of its Account No. 191. PGT request an effective date of April 29, 1994, and requests waiver of applicable notice requirements.

PGT states that the tariff sheet provides for a refund of \$8,967,911 to its former sales customer, Pacific Gas and Electric Company, which reflects prior period adjustments charged and refunded to PGT in the six-month period since the termination of its Purchased Gas Adjustment (PGA) mechanism and the removal, as of March 31, 1993, of the billing adjustment for purchases from the Fontenelle Field at issue in PGT's last annual PGA proceeding in Docket No.

TA93-1-86-000. PGT also requests termination of the technical conference established in Docket No. TA93-1-86-000.

PGT further states that a copy of its filing is being served on the affected customer and interested state regulatory agencies as well as all parties on the service list compiled by the Secretary in this proceeding.

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 §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 94-11043 Filed 5-6-94; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM94-2-8-000]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised sheets:

First Revised Sheet No. 7
First Revised Sheet No. 92
First Revised Sheet No. 93

South Georgia states that the proposed tariff sheets are being filed with a proposed effective date of June 1, 1994. South Georgia states that the aforesaid tariff sheets eliminate South Georgia's recovery of monthly fixed take-or-pay, buy-out, and buy-down charges.

South Georgia notes that copies of South Georgia's filing will be served upon all of South Georgia's customers, interested commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules

of Practice and Procedure (§ 385.214 and 385.211). All such petitions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 94-11036 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY APP; SOUTHERN

Federal Energy Regulatory Commission

[Docket No. TM94-4-7-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, with an effective date of May 1, 1994:

Fourth Revised Sheet No. 14
Sixth Revised Sheet No. 15
Fourth Revised Sheet No. 16
Sixth Revised Sheet No. 17
Sixth Revised Sheet No. 18
Fourth Revised Sheet No. 22
Second Revised Sheet No. 41
First Revised Sheet No. 42
Second Revised Sheet No. 53
First Revised Sheet No. 61
First Revised Sheet No. 62
First Revised Sheet No. 206
Second Revised Sheet No. 207
First Revised Sheet No. 208

Southern states that the above-referenced tariff sheets are being filed with a proposed effective date of May 1, 1994, in compliance with the requirements of the Stipulation and Agreement approved by the Commission order of March 23, 1989 in Docket Nos. RP83-58-000, et al.

Southern states that the proposed tariff sheets eliminate all references to the expiring fixed take-or-pay charge related to Southern's buy-out and buy-down costs and volumetric surcharge mechanisms related to settlement payments made directly by Southern.

Southern states that copies of Southern's filing were served upon all of Southern's jurisdictional purchasers,

shippers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 94-11035 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-165-002]

Southern Natural Gas Co., GSR Cost Recovery Filing

May 3, 1994.

Take notice that on April 29, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect an increase in GSR billing units effective May 1, 1994 due to the implementation of a pipeline expansion and other new transportation commitments under Rate Schedule FT:

Seventh Revised Sheet No. 15
Seventh Revised Sheet No. 17
Fifth Revised Sheet No. 29
Fifth Revised Sheet No. 30
Fifth Revised Sheet No. 31

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Southern's filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11048 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-224-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 3, 1994.

Take notice that on April 29, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets:

FERC Gas Tariff

First Revised Volume No. 1

Sixth Revised Sheet No. 12

Third Revised Sheet No. 229

FPC Gas Tariff

Original Volume No. 2

Sixteenth Revised Sheet No. 82

Seventeenth Revised Sheet No. 547

Nineteenth Revised Sheet No. 982

Seventeenth Revised Sheet No. 1005

Eleventh Revised Sheet No. 1085

Texas Gas states that the revised tariff sheets are being filed to reflect the GSR component of the Interruptible Transportation rate attributable to 10 percent of total GSR costs.

Texas Gas requests an effective date of May 1, 1994, for the proposed tariff sheets.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11038 Filed 5-6-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4882-6]

Public Meetings on Alternatives for Ground-Water Monitoring at Small Dry/Remote Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a series of four public, one-day meetings on alternatives for ground-water monitoring at small, dry/remote municipal solid waste landfills (MSWLFs). These meetings will offer an opportunity for interested parties to express their views and provide information on the issues and impacts associated with alternatives for ground-water monitoring at MSWLFs that qualify for the small landfill exemption under 40 CFR 258.1(f). The Agency will use this information in preparing any further action on alternatives to ground-water monitoring for these affected landfills. These meetings will be held in Midland, Texas; Salt Lake City, Utah; Anchorage, Alaska; and Washington, DC, as discussed below. Interested parties may submit comments directly to the Agency without speaking or attending a meeting if they choose.

FOR FURTHER INFORMATION CONTACT: For information on meeting plans or to pre-register to present a statement at any of the meetings, please call the U.S. EPA Alternatives to Ground-Water Monitoring Hot Line at 800-230-3564. For technical information, contact Scott Ellinger, Municipal and Industrial Solid Waste Division, U.S. Environmental Protection Agency (Mail Code 5306) 401 M Street, SW., Washington, DC 20460 (202-260-1350). If you require sign language or voice language interpreting services, please call 800-230-3564 through relay.

A summary of the meetings and all written comments received by EPA on alternatives to ground-water monitoring will be placed in a public docket and made available for viewing in the RCRA Information Center (RIC), which is located in room M2616, U.S. EPA, 401 M Street SW., Washington, DC 20460. Please place the docket number F-94-AGAP-FFFFF on all documents submitted to the Agency. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials. Call 202-260-9327 for an appointment. Copies cost \$0.15 per page.

SUPPLEMENTARY INFORMATION:**A. Background**

On October 9, 1991, EPA promulgated a Final Rule (40 CFR part 258) for Municipal Solid Waste Landfills (MSWLFs) under Subtitle D of the Resource Conservation and Recovery Act (RCRA). See 56 FR 50978. The Final Rule set forth minimum federal criteria for MSWLFs, including location restrictions, facility design and operating criteria, ground-water monitoring requirements, corrective action requirements, financial assurance requirements, and closure and post-closure care requirements. In addition, the Final Rule included an exemption for owner/operators of certain small MSWLF units from the design (Subpart D) and ground-water monitoring and corrective action (Subpart E) requirements of the criteria. See 40 CFR 258.1(f). To qualify for the exemption, the small landfill had to accept less than 20 tons per day (TPD), on an annual average basis, exhibit no evidence of ground-water contamination, and serve either:

- (1) A community that experiences an annual interruption of surface transportation of at least three consecutive months that prevents access to a regional waste management facility, or
- (2) A community that has no practical waste management alternative and the landfill is located in an area that receives less than or equal to 25 inches of precipitation annually.

In adopting this limited exemption, the Agency maintained that it had complied with the statutory standard to protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators. See discussion in 56 FR 50911 (October 9, 1991). In January, 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a petition with the U.S. Court of Appeals, District of Columbia Circuit, for review of the Subtitle D criteria. The Sierra Club and NRDC alleged, among other things, that EPA exceeded its statutory authority when it exempted these small landfills from the ground-water monitoring requirements. On May 7, 1993, the United States Court of Appeals for the District of Columbia Circuit issued its opinion (*Sierra Club versus United States Environmental Protection Agency*, 992 F.2d 337 (D.C. Cir. 1993)), stating that under RCRA section 4010(c), the only factor EPA could consider in determining whether facilities must monitor their ground water was whether such monitoring was "necessary to detect contamination",

not whether such monitoring is "practicable." Thus, the Court vacated the small community exemption as it pertains to ground-water monitoring. (The Court did not require EPA to remove the exemption for design requirements.)

Accordingly, the Agency, as part of the October 1, 1993 final rule delaying the effective date of the MSWLF criteria (58 FR 51536, October 1, 1993), rescinded the small landfill ground-water monitoring exemption. At the same time, however, to assure that owners and operators of such small MSWLFs had adequate time to decide whether to continue to operate under the Court's ruling, and to prepare financially for the added costs if they decided to continue to operate, EPA delayed the effective date of the MSWLF criteria for these facilities for two years.

This additional two years provides the time for EPA to determine if there were practical and affordable alternative monitoring systems/approaches which were adequate to detect contamination. The U.S. Court of Appeals, in its decision, did not preclude the possibility that EPA could establish separate ground-water monitoring standards for these small, dry/remote landfills that take into account size, location, and climate, as long as these separate requirements ensured that an owner/operator could detect ground-water contamination. The Agency, therefore, solicited comments on alternative ground-water monitoring requirements in the publication of the proposed rule to extend the effective date of the MSWLF criteria (56 FR 40568, July 28, 1993). Today's announcement of public meetings provides interested parties with an additional opportunity to provide the Agency with information regarding alternative ground-water monitoring requirements.

B. Meeting Format, Dates, and Locations

The Agency is inviting interested parties to provide factual information to assist the Agency in better understanding alternatives to ground-water monitoring. Interested parties (including representatives from State and local governments; landfill owners and operators; consultants, geologists, engineers, and others involved in waste management; and environmental and other public interest organizations) may attend the meetings, present a statement, and/or submit written information to the Agency. Speakers should register at least one week in advance of the meeting at which they wish to speak. Speakers should limit

their oral statement to approximately five minutes. In addition, speakers may be asked to respond to questions from the EPA panel. Interested parties may submit written comments at the meeting without speaking, or directly to the public docket without attending the meeting (see information above). All written statements should be submitted in an original and two copies. Meeting attendees who do not wish to speak do not need to register in advance.

Each meeting will begin at 8:30 a.m. and will continue until 5 p.m., (except for the Salt Lake City meeting which will begin at 9 a.m.), with a break for lunch from 12 noon to 1 p.m. EPA will give its introductory remarks at the beginning of each meeting. Depending on the number of speakers, the meetings may adjourn earlier than 5 p.m. if all attendees who have registered to make a statement have completed their presentations earlier than 5 p.m. Speakers generally will be scheduled in the order of registration. Speakers may be asked to limit their statement to less than five minutes, depending on the number of speakers. If there is sufficient time available after all pre-registered speakers have been scheduled, additional speakers who register at the meeting site will be able to present a statement.

The schedule for the public meetings is listed below. Please note that meeting space is limited to a first-come, first-serve basis.

June 8, 1994—Salt Lake City, Utah: The Chapman Library, 577 South 900 West, Meeting Room 1.

June 10, 1994—Anchorage, Alaska: Federal Building, 222 West 7th Avenue, Rooms 137 and 139.

June 14, 1994—Midland, Texas: The Permian Basin Regional Planning Commission Conference Room, 2910 LaForce Boulevard, Midland International Airport.

June 28, 1994—Washington, DC: The U.S. EPA Auditorium, Waterside Mall, 401 "M" Street, Southwest.

C. Issues Associated with Alternatives to Ground-Water Monitoring

Although EPA would like to learn of any issues that the Agency should address for future actions on alternatives to ground-water monitoring for MSWLFs, the Agency encourages interested parties to focus their comments and provide factual information regarding the following:

- What would it cost these small, dry/remote communities to comply with the full set of ground-water monitoring requirements as specified in 40 CFR part 258, Subpart E?

- The Agency is investigating the potential for using alternatives to conventional ground-water monitoring well systems that may be capable of detecting ground-water contamination, taking into account such factors as landfill size and location; leachate quantity and quality; and local climate hydrology, geology, and hydrogeology. Examples of such alternatives include: monitoring of the unsaturated (vadose) zone; surface geophysical techniques such as electrical resistivity and ground penetrating radar, and the sampling of seeps, springs, and nearby drinking water or agricultural supply wells. The Agency solicits ideas regarding potential alternatives and their costs and limitations, particularly with respect to implementation by small landfill owners and operators.

- Should no alternative ground-water monitoring techniques be appropriate for a small dry/remote landfill, and ground-water monitoring wells are required, in what ways can the Agency modify the ground-water monitoring regulations (e.g., monitoring parameters, schedules) to provide greater implementation flexibility?

- The "no-migration" demonstration currently available under 40 CFR 258.50(b) allows an approved State to suspend ground-water monitoring at a landfill if the owner/operator can demonstrate that there will be no potential for migration from the landfill to the uppermost aquifer during the active life and post-closure care of the landfill. The Agency seeks comment on whether owners/operators of these small landfills can collect the information needed in order to make this demonstration at their particular landfill.

- The Agency is considering preparation of additional guidance that would assist owners and operators of small dry/remote landfills in making no-migration demonstrations. The Agency solicits ideas for this guidance.

Dated: April 15, 1994.
Elizabeth A. Cotsworth,
Acting Director, Office of Solid Waste.
[FR Doc. 94-11083 Filed 5-6-94; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2003]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 4, 1994.

Petitions for reconsiderations and clarifications have been filed in the

Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to these petitions must be filed May 24, 1994. See § 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Cable Television Consumer Protection and Competition Act of 1992 (MM Docket No. 92-265)

Number of Petitions Filed: 1.

Subject: Review of the Pioneer's Preference Rules (ET Docket No. 93-266)

Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-11002 Filed 5-6-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1025-DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA-1025-DR), dated April 26, 1994, and related determinations.

EFFECTIVE DATE: April 26, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 26, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and flooding on April 9, 1994 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act

("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Cass, Champaign, DeWitt, Douglas, Iroquois, Menard, Sangamon and Vermilion Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,
Director.

[FR Doc. 94-11109 Filed 5-6-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1023-DR]

Missouri; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA-1023-DR), dated April 21, 1994, and related determinations.

EFFECTIVE DATE: May 3, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 5, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-11112 Filed 5-6-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1023-DR]

Missouri; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA-1023-DR), dated April 21, 1994, and related determinations.

EFFECTIVE DATE: May 3, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated April 21, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 21, 1994:

Cole and Pemiscot Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-11111 Filed 5-6-94; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1015-DR]

Pennsylvania; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA-1015-DR), dated March 10, 1994, and related determinations.

EFFECTIVE DATE: May 2, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Pennsylvania dated March 10, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 10, 1994:

Armstrong, Monroe, Montour and Susquehanna Counties for Public Assistance. (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-11110 Filed 5-6-94; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Heartland Financial USA, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has 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.

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 June 2, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Heartland Financial USA, Inc.*, Dubuque, Iowa; to acquire Keokuk Bancshares, Inc., Keokuk, Iowa, and its wholly owned subsidiary First Community Bank, a Federal Savings Bank, Keokuk, Iowa, and its wholly owned subsidiary KFS Services, Inc., Keokuk, Iowa, and thereby engage in the nonbanking activity of acting as principal, agent or broker for credit related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11060 Filed 5-6-94; 8:45 am]

BILLING CODE 6210-01-F

Old National Bancorp; 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 31, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to engage *de novo* through its subsidiary The ONB Trust Company, N.A., Evansville, Indiana in activities solely of a fiduciary, agency and/or custodial nature as permitted under § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11061 Filed 5-6-94; 8:45 am]

BILLING CODE 6210-01-F

Security Capital Bancorp, 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 June 2, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Security Capital Bancorp*, Salisbury, North Carolina; to acquire 100 percent of the voting shares of First Federal Savings and Loan Association of Charlotte, Charlotte, North Carolina, and First Charlotte Interim Bank, Charlotte, North Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Summit Bancshares, Ltd.*, Olney, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Olney, Olney, Illinois.

Board of Governors of the Federal Reserve System, May 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11062 Filed 5-6-94; 8:45 am]

BILLING CODE 6210-01-F

Waterhouse Investor Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-5691) published on page 11608 of the issue for Friday, March 11, 1994.

Under the Federal Reserve Bank of New York heading, the entry for Waterhouse Investor Services, Inc., is revised to read as follows:

1. *Waterhouse Investor Services, Inc.*, New York, New York, to become a bank holding company by acquiring 100 percent of the voting shares of Waterhouse National Bank, White Plains, New York, a *de novo* bank.

In connection with this application, Applicant has also applied to acquire Waterhouse Securities, Inc., and Washington Discount Brokerage Corp., both of New York, and thereby engage in providing securities brokerage services restricted to buying and selling securities solely as agent for the account of customers pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y.

Comments on this application must be received by May 23, 1994.

Board of Governors of the Federal Reserve System, May 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11063 Filed 5-6-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3492]

Archer Daniels Midland Company;
Prohibited Trade Practices, and
Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Illinois-based firm from making any claims, unless substantiated by competent and reliable scientific evidence, that any of its products or plastic product additives is degradable, biodegradable, or photodegradable when disposed of in sanitary landfills, or that such products or additives offer any environmental benefit compared to other products when disposed of as trash buried in a sanitary landfill or incinerated.

DATES: Complaint and Order issued April 12, 1994.¹

FOR FURTHER INFORMATION CONTACT:

Michael Dershowitz, FTC/S-4002,
Washington, DC 20580. (202) 326-3158.

SUPPLEMENTARY INFORMATION: On Thursday, January 21, 1993, there was published in the *Federal Register*, 58 FR 5394, a proposed consent agreement with analysis in the Matter of Archer Daniels Midland Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94-11106 Filed 5-6-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9189]

Detroit Auto Dealers Association, Inc.,
et al.; Proposed Consent Agreement
With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the association of motor vehicle dealers and a former officer, James Daniel Hayes, from entering into, continuing or carrying out any agreement to establish, fix or maintain any hours of operation of any dealer in the Detroit area. In addition, the consent agreement would require the respondent association to amend its bylaws to comply with the provisions of the order, and to place advertisements, in the city's two daily newspapers, stating that certain area dealers are required by the Commission order to maintain extended hours (at least 62 hours a week) for a one-year period.

DATES: Comments must be received on or before July 8, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ernest Negata, FTC/H-394, Washington, DC 20580. (202) 326-2714.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order
To Cease and Desist

In the Matter of: Detroit Auto Dealers Association, Inc., a corporation, et al.

The agreement herein, by and between Detroit Auto Dealers Association, Inc. ("DADA") and James Daniel Hayes, individually, hereafter

sometimes referred to as respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent DADA is an incorporated trade association for motor vehicle dealers with its principal place of business located at 1800 W. Big Beaver Rd., Troy, MI 48084.

2. Respondent James Daniel Hayes was, at relevant times, an officer of DADA, and as such formulated, directed and controlled the acts and practices of DADA. James Daniel Hayes' mailing address is 2845 Palmerston Rd., Troy, MI 48084.

3. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them and others with violation of section 5 of the Federal Trade Commission Act, and have filed answers to said complaint denying said charges.

4. Respondents admit all the jurisdictional facts relating to Count I set forth in the Commission's complaint in this proceeding.

5. Respondents waive the following with respect to Count I of the complaint:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and
- (d) Any claim under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of Count I of the complaint issued by the Commission in this proceeding.

7. This agreement is for settlement purposes only and relates solely to Count I of the Commission's complaint in this proceeding; this agreement does not constitute an admission by the respondents that the law has been violated as alleged in Count I of the complaint issued by the Commission.

¹ Copies of the Complaint, and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to the respondents (1) issue its decision containing the following Order to cease and desist in disposition of Count I of the complaint issued by the Commission in this proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the agreement may be used to vary or to contradict the terms of the Order.

9. Respondents have read the complaint and the Order contemplated hereby. They understand that once the Order has been issued, they may be required to file one or more compliance reports showing they have fully complied with the Order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

It is ordered, that for the purposes of this order, the following definitions shall apply:

1. *Person* means any natural person, corporation, partnership, association, joint venture, trust, or other organization or entity, but not governmental entities.

2. *Dealer* means any person who receives on consignment or purchases motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such person.

3. *Dealer association* means any trade, civic, service, or social association whose membership is composed primarily of dealers.

4. *Detroit area* means the Detroit, Michigan metropolitan area, comprising Macomb County, Wayne County and Oakland County in the State of Michigan.

5. *Hours of operation* means the times during which a dealer is open for business to sell or lease motor vehicles.

6. *Weekday hours* means the hours of 9 a.m. to 6 p.m. Monday through Friday.

7. *Non-weekday hours* means hours other than 9 a.m. to 6 p.m. Monday through Friday.

8. *Respondent* means any dealership, individual, or association respondent.

I

It is further ordered, that DADA and James Daniel Hayes shall cease and desist from, directly or indirectly or through any corporate or other device, entering into, continuing, or carrying out any agreement, contract, combination, or conspiracy, in or affecting commerce (as "commerce" is defined in the Federal Trade Commission Act), with any other respondent or other dealer or dealer association in the Detroit area to establish, fix, maintain, adopt, or adhere to any hours of operation.

II

It is further ordered, that DADA and James Daniel Hayes shall cease and desist from, directly or indirectly or through any corporate or other device, performing any of the following acts or practices or encouraging, inducing, or requiring any person to perform any of the following acts or practices, or entering into, continuing, or carrying out any agreement, contract, combination, or conspiracy with any other person in the Detroit area to do or perform any of the following acts or practices:

A. Exchanging information or communicating with any other respondent or other dealer or dealer association in the Detroit area concerning hours of operation, except to the extent necessary (i) to comply with any order of the Federal Trade Commission, (ii) after two (2) years from the date this order becomes final, to incorporate individual dealers' hours of operation in lawful joint advertisements, and (iii) in connection with special sales events or promotions sponsored or coordinated by DADA, including but not limited to the North American International Auto Show; or

B. Requesting, recommending, coercing, influencing, inducing, encouraging, or persuading, or attempting to request, recommend, coerce, influence, induce, encourage, or persuade, any other respondent or other dealer or dealer association in the Detroit area to maintain, adopt or adhere to any hours of operation.

III

It is further ordered, that respondent DADA shall:

A. Beginning thirty (30) days after this order becomes final, and for a period of not less than four (4) weeks thereafter, place and cause to be disseminated each week at least four (4) advertisements, including one in the Thursday editions of the Detroit News and the Detroit Free Press, one in the Saturday edition of the combined Detroit News and Free Press, and one in any other edition of the Detroit News, the Detroit Free Press, or the combined Detroit News and Free Press. Each advertisement shall: (1) List all dealership respondents which within ten (10) days prior to the placement of the advertisement are subject to a final Commission order to maintain minimum weekly hours of operation, (2) list all non-respondent dealerships in the Detroit area that are owned or operated by an individual respondent who within ten (10) days prior to the placement of the advertisement is subject to a final Commission order to maintain minimum weekly hours of operation, and (3) disclose that all such orders have a minimum hours requirement of 62 hours per week, or 58 hours per week where applicable. For the purpose of complying with Part III.A.(2), above, DADA shall use its best efforts to identify all non-respondent dealerships in the Detroit area that are owned or operated by an individual respondent. The advertisements shall be devoted exclusively to the content set forth in paragraph B. hereto. The advertisements shall be clear and prominent containing a banner headline in 24 point or larger bold type so that it can be readily noticed, with the principal portion of the text in 12 point or larger type, and the list of respondent and non-respondent dealerships in 9 point or larger type. The advertisement shall be a minimum of one-eighth (1/8) of a page and shall be placed in the same location at which advertisements for the sale of new automobiles ordinarily appear; and

B. The advertisements referred to in paragraph A. of this section shall state as follows:

Auto Dealers Open For Extended Hours

Prior to [date of Order] most Detroit area automobile dealers have not been open for business on Saturday or on Tuesday, Wednesday, or Friday evening. As a result of a consent order of the Federal Trade Commission, the following Detroit area automobile dealers must offer expanded shopping hours of a minimum of 62 hours per week for one year and are free to choose their own hours thereafter.

[list dealerships]*

IV

It is further ordered, that DADA shall, for a period of five (5) years from the date this order becomes final, cause to be made minutes of all business meetings of its membership, its board of directors, and its committees. Such minutes shall: (i) Identify all persons attending such meeting, (ii) include a certification, signed by the presiding officer and the secretary under penalty of perjury, that states whether hours of operation were discussed at the meeting, and (iii) summarize what was discussed at the meeting. If hours of operation were discussed at any business meeting subject to this order, then the minutes of such meeting shall identify the participants in the discussion of hours of operation and state in detail the substance of the discussion(s). DADA shall retain such minutes (including, but not limited to, the required certifications) for a period of five (5) years from the date the minutes were created. Such minutes shall be provided to the Commission upon request.

V

It is further ordered, that DADA shall:

A. Within sixty (60) days from the date this order becomes final, amend its bylaws, rules and regulations to eliminate any provision inconsistent with any provisions of this order;

B. Within sixty (60) days from the date this order becomes final, amend its bylaws, rules and regulations to incorporate:

(1) A provision that prohibits its members from discussing at any formal or informal membership, board of directors, or committee meeting the hours of operation of any dealer, except to the extent necessary to comply with any order of the Federal Trade Commission; and

(2) A provision that requires expulsion from membership of any member who violates such prohibition;

(C) Within ten (10) days after the amendment of any bylaws, rules or regulations pursuant to this order, furnish a copy of such amended bylaws, rules or regulations to all members, and within ten (10) days of any new member joining DADA, furnish to such new member a copy of the bylaws, rules and regulations of DADA; and

D. Within sixty (60) days after receiving information from any source concerning a potential violation of any

bylaw, rule, or regulation required by part V.B. of this order, investigate the potential violation, record the findings of the investigation, and expel for a period of one (1) year any member who is found to have violated any of the bylaws, rules or regulations required by part V.B. of this order.

VI

It is further ordered, that DADA shall, for a period of five (5) years from the date this order becomes final, provide to the Commission the name and address of any member expelled pursuant to the requirements of part V.D. of this order within ten (10) days after such expulsion.

VII

It is further ordered, that within ten (10) days after the date this order becomes final DADA shall provide a copy of the order to each of its officers, directors, members and employees. For a period of five (5) years from the date this order becomes final, DADA shall provide a copy to each new member and new employee, within ten (10) days after the date the employee is hired or the new member joins DADA.

VIII

It is further ordered, that DADA and James Daniel Hayes shall, within ninety (90) days after this order becomes final and annually thereafter for a period of five (5) years, file with the Commission a verified written report setting forth in detail the manner and form in which they have complied with this order. The requirements of parts VIII and IX shall not apply to James Daniel Hayes; provided, however, that James Daniel Hayes shall, within ninety (90) days after this order becomes final, file with the Commission a verified written report stating that he is no longer employed by DADA or any other dealer association in the Detroit area and does not own or operate a dealership in the Detroit area; provided, further, that if circumstances change whereby James Daniel Hayes shall become employed by DADA or any other dealer association in the Detroit area, or shall own or operate a dealership in the Detroit area, then he shall notify the Commission at the earliest practicable date of such a change and shall begin complying with the requirements of parts VIII and IX of this order.

IX

It is further ordered, that for a period of five (5) years from the date this order becomes final, DADA shall notify the Commission at least thirty (30) days prior to any proposed change in

corporate status (such as dissolution, assignment, or sale) that results in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in DADA which may affect compliance obligations arising out of the order. James Daniel Hayes shall, for five (5) years from the date the order becomes final, promptly notify the Commission of the discontinuance of his present business or employment and of any new affiliation or employment with any dealer or dealer association. Such notice shall include his new business address and a statement of the nature of the business or employment in which he is newly engaged, as well as a description of his duties and responsibilities in connection with the new business or employment.

DADA of 1800 W. Big Beaver Rd., Troy, Michigan 48084 and James Daniel Hayes of 2845 Palmerston Rd., Troy, MI 48084 hereby agree to the terms and conditions of the Consent Agreement containing an order to cease and desist from engaging in the acts and practices identified in Count I of the complaint in In the Matter of Detroit Auto Dealers Association, Inc. a corporation, et al., Docket No. 9189.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Detroit Automobile Dealers Association, Inc. ("DADA") and James Daniel Hayes, a former officer of the association.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested parties. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

On December 20, 1984, the Commission issued an administrative complaint alleging that DADA, James Daniel Hayes and certain automobile dealers and dealer associations agreed among themselves and with others to limit competition in the sale of new motor vehicles in the Detroit, Michigan area in violation of section 5 of the Federal Trade Commission Act, by adopting and adhering to a schedule limiting hours of operation for the sale or lease of motor vehicles in the Detroit area. The alleged agreement limited weekday evening hours to Mondays and Thursdays and eliminated Saturday

* Dealers noted with an asterisk must offer a minimum of 62 shopping hours per week during Daylight Savings Time and a minimum of 58 hours at other times.

hours altogether, except for occasional special sales.

On July 14, 1987, the Administrative Law Judge ("ALJ") issued an Initial Decision dismissing the complaint. The ALJ found that the dealers and the other respondents had acted in response to employee demands for shorter hours and, therefore, that the dealers' agreement was exempt from the antitrust laws by reason of the nonstatutory labor exemption.

Counsel supporting the complaint appealed the Initial Decision to the Commission. On February 22, 1989, the Commission issued a decision reversing the ALJ. The Commission held that the dealers were not entitled to the nonstatutory labor exemption because their uniform hours restrictions were not the result of any collective bargaining activity with employees; on the contrary, the dealers had agreed among themselves in order to avoid collective bargaining. The Commission's Final Order, among other provisions, prohibited the dealers from conspiring in any way to fix hours of operation. As a corrective measure the Final Order also required the dealers to remain open a minimum of 64 hours a week for one year. The Commission found that "a cease and desist order alone would be inadequate to remedy the respondents' violations of section 5." Because of the history of violent enforcement of the hours restrictions, the Commission found that "[d]ealers individually will decide to remain closed for fear of reprisals if they try to extend hours. Only if many dealers are open at the same time, making enforcement of the restriction difficult or impossible, will the fear of being singled out for enforcement be overcome." Detroit Auto Dealers Ass'n, Inc., 111 F.T.C. 417, 506 (1989). The Commission's Final Order also required DADA to print newspaper advertisements informing the Detroit-area public that dealers were now required to maintain expanded hours for a one year period pursuant to the Commission's order.

DADA, James Daniel Hayes, the respondent dealers and other respondents appealed the Commission's decision to the United States Court of Appeals for the Sixth Circuit. On January 31, 1992, the Court of Appeals affirmed the Commission's decision in substantial part and remanded the case to the Commission for the "limited purpose" of reconsidering certain issues.

On January 24, 1994, the Commission accepted, and on February 10, 1994, published for public comment, an Agreement Containing a Consent Order to Cease and Desist in order to resolve

the allegations in the administrative complaint as to 146 respondents, consisting of dealerships, owners or managers of dealerships and dealer associations. Detroit Automobile Dealers Ass'n, Inc., Proposed Consent Agreement With Analysis to Aid Public Comment, 59 F. R. 6263 (Feb. 10, 1994). DADA and James Daniel Hayes were not parties to that agreement.

DADA and James Daniel Hayes subsequently entered into a separate Agreement Containing a Consent Order to Cease and Desist to resolve the allegations in the administrative complaint against them. Under part I of the proposed order, DADA and James Daniel Hayes would be prohibited from entering into, continuing or carrying out any agreement to establish, fix or maintain any hours of operation.

Part II.A of the proposed order would prohibit DADA and James Daniel Hayes from exchanging information or communicating with any dealer or association concerning hours of operation, except to the extent necessary: (i) To comply with any order of the Commission, (ii) after two (2) years from the date the order becomes final, to incorporate individual dealers' hours of operation in lawful joint advertisements, and (iii) in connection with special sales events or promotions sponsored or coordinated by DADA, such as the North American International Auto Show.

Part II.B of the proposed order would prohibit DADA and James Daniel Hayes from requesting, recommending, coercing, influencing, inducing, encouraging or persuading any dealer or dealer association to maintain, adopt or adhere to any hours of operation.

Under part III of the proposed order, DADA would be required to place four weekly advertisements, specified in part III.B of the order, in the Detroit News and Detroit Free Press for a four-week period, stating that certain dealers are required by Commission order to maintain extended hours for a one-year period, and listing the dealers subject to such a requirement. The advertisements must be printed in a "clear and prominent manner" using a banner headline in 24 point or larger bold type and twelve point or larger type for the principal portion of the text so that it can be readily noticed.

Under part IV of the proposed consent order, DADA would be required to maintain detailed certified minutes of any meeting at which hours of operation are discussed.

Part V of the proposed order would require DADA to amend its bylaws, rules and regulations to:

(i) Eliminate any provision inconsistent with any provision of the order;

(ii) Incorporate a provision that prohibits its members from discussing hours of operation at any meeting; and

(iii) Expel from membership any member who violates such prohibition. DADA would also be required to furnish a copy of the amended bylaws, rules and regulations to every member and new member, and within 60 days after receiving information concerning a potential violation of any bylaw, rule or regulation required by the order, conduct an investigation and expel for one year any person who is found to have committed a violation. Under part VI of the proposed order, DADA would be required to provide to the Commission the name and address of each member expelled pursuant to paragraph V.

The remainder of the proposed order contains provisions regarding compliance, record-keeping and distribution of the order to various persons. Part VII would require DADA to give a copy of the order to each employee and member, and to each new employee and member, as the case may be. Part VIII would require DADA and James Daniel Hayes to file annual compliance records for a period of five years. The reporting requirement for James Daniel Hayes would be waived, provided that he submits an initial verified report stating that he is no longer employed by DADA or any other dealer association and does not own or operate a dealership in the Detroit area. The reporting requirement would be reactivated if he again becomes employed by DADA or another dealer association or comes into ownership or operation of a dealership in the Detroit area. Part IX of the proposed order would require DADA and James Daniel Hayes to report any change of status that may affect their obligations under the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-11107 Filed 5-6-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 922 3332]

Hayes Microcomputer Products, Inc.;
Proposed consent agreement With
Analysis to Aid Public Commentg

AGENCY: Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Georgia manufacturer and distributor of computer communications products from making certain representations regarding any modem-related product, unless the respondent possesses and relies upon competent and reliable substantiating evidence.

DATES: Comments must be received on or before July 8, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Linda Badger, FTC/San Francisco Regional Office, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Hayes Microcomputer Products, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Hayes Microcomputer Products, Inc., a corporation ("proposed respondent"), and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Hayes Microcomputer Products, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Hayes Microcomputer Products, Inc., is a corporation organized, existing and

doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 5835 Peachtree Corners East, in the City of Norcross, State of Georgia.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

- a. Any further procedural steps;
- b. The requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed

respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order*Definitions*

For the purposes of this Order, the following definitions shall apply:

A. The term *Improved Escape Sequence with Guard Time* means the escape method technology described, among other things, in United States Patent Number 4,549,302, titled as "Modem With Improved Escape Sequence With Guard Time Mechanism."

B. The term *Time Independent Escape Sequence, or Ties*, means an escape sequence consisting of three escape characters (eg., "+++") followed by a valid AT command, which can be followed by additional at commands, and ended with another character, typically a carriage return.

C. The term *modem-related product* means any modem, any component of any modem, or any hardware or software used in the operation of any modem.

I

It is ordered that respondent, Hayes Microcomputer Products, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of products containing the Improved Escape Sequence with Guard Time, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Because a modem does not incorporate the Improved Escape Sequence with Guard Time, the use of that modem creates a substantial risk of data destruction;

B. When incorporated in modems, the "Time Independent Escape Sequence" ("TIES") creates a substantial risk of data transmission failure;

C. The Improved Escape Sequence with Guard Time is the only escape method that does not create a substantial risk of data transmission failure; or

D. The use of any modem that does not incorporate the Improved Escape Sequence with Guard Time entails a data transmission problem that can be solved only by replacing it with a modem that incorporates the Improved Escape Sequence with Guard Time;

unless such representation is true, and at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II

It is further ordered that respondent, Hayes Microcomputer Products, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any modem-related product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the risk of experiencing data destruction, data loss or data transmission problems due to any escape method, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation including complaints from consumers.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the respondent that may effect compliance obligations under this Order such as dissolution, assignment, or sale resulting in the emergence of successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s).

V

It is further ordered that respondent shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its officers, agents, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, to all company executives, and to all marketing and sales managers; and for a period of three (3) years, from the date of issuance of this Order, distribute a copy of this Order to all of respondent's future such officers, agents, representatives, independent contractors, and employees.

VI

It is further ordered that respondent shall, within sixty (60) days from the date of service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Hayes Microcomputer

Products, Inc., ("Hayes") a Georgia corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

Hayes manufactures and distributes products for computer communications, including modems, local area networks, and software. This matter concerns a patented "escape sequence" which Hayes developed for use in its modems, and licenses to other companies. An escape sequence is a mechanism by which modems end a data transmission. The name of the Hayes escape sequence at issue is the "Improved Escape Sequence with Guard Time." The Commission's complaint charges that respondent's advertising contained false representations that the use of other escape methods creates a substantial risk of experiencing data transmission problems. For example, the complaint charges that Hayes made false representations regarding the Time Independent Escape Sequence ("TIES"), an escape method developed by several of Hayes' competitors. Specifically, the complaint alleges that the respondent falsely represented that:

(1) Because a modem does not incorporate the Improved Escape Sequence with Guard Time, the use of that modem creates a substantial risk of data destruction;

(2) When incorporated in modems, the "Time Independent Escape Sequence" ("TIES") creates a substantial risk of data transmission failure;

(3) The Improved Escape Sequence with Guard Time is the only escape method that does not create a substantial risk of data transmission failure; and

(4) The use of any modem that does not incorporate the Improved Escape Sequence with Guard Time entails a data transmission problem that can be solved only by replacing it with a modem that incorporates the Improved Escape Sequence with Guard Time.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order would prohibit the company from making any of the false claims delineated above, unless they are

true, and at the time of making them, the respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence.

Part II of the proposed order includes fencing-in relief, prohibiting the company from making representations relating to any modem-related product, regarding the risk of experiencing data loss, data destruction, or data transmission problems due to any escape method, unless, at the time of making such representations, the company possesses and relies upon a reasonable basis, which when appropriate, must include competent and reliable scientific evidence. It is to be noted that this fencing-in provision relates to any method used to switch a modem to the command mode—this would include out-of-band escape sequences as well as in-band escape sequences such as TIES or Hayes' Improved Escape Sequence with Guard Time.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives involved in the preparation and placement of the company's advertisements, as well as to all company executives and marketing and sales managers; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The proposed of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94-11108 Filed 5-6-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. No. C-3489]

Nu Skin International, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Utah-based marketing companies and

their officers from making deceptive claims about their products or similar products, and requires them to possess competent and reliable scientific evidence to substantiate hair growth, wrinkle removal or burn claims, and performance, benefits, efficacy or safety claims of any food, drug, device or cosmetic they offer in the future. The respondents also are required to make certain disclosures regarding future earnings claims to prospective distributors and disgorge a total of \$1.225 million.

DATES: Complaint and Order issued April 1, 1994.¹

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Nicholas Franczyk, FTC/Chicago Regional Office, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353-8156.

SUPPLEMENTARY INFORMATION: On Tuesday, January 25, 1994, there was published in the *Federal Register*, 59 FR 3639, a proposed consent agreement with analysis in the Matter of Nu Skin International, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 94-11105 Filed 5-6-94; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF-94-X]

Youth Gang Drug Prevention Program; Availability of Fiscal Year 1994 Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF); Administration for Children and

Families (ACF); Department of Health and Human Services (DHHS).

ACTION: Announcement of the availability of funds and request for applications under the Youth Gang Drug Prevention Program.

SUMMARY: The Family and Youth Services Bureau (FYSB) of the Administration on Children, Youth and Families (ACYF) announces the availability of funds for competing discretionary grants under the Youth Gang Drug Prevention Program. The purpose of this program is to conduct community-based, comprehensive and coordinated activities to reduce and prevent the involvement of youth in gangs that engage in illicit drug-related activities. This announcement is a departure from ACYF's traditional approach to youth gang prevention. ACYF intends to demonstrate that multi-dimensional prevention strategies concentrated in small socially and economically isolated communities have great potential for positively impacting young adolescents as they develop to adulthood.

This announcement describes the grant application process and covers the single demonstration priority area for which new grants will be awarded in Fiscal Year 1994: Community Planning Grants.

DATES: The closing date for submittal of applications under this announcement is July 8, 1994.

ADDRESSES: Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, OFM/DDG, 901 D Street, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, ACF/ACYF, Family and Youth Services Bureau, Division of Program Support, P.O. Box 1182, Washington, DC 20013. Telephone (202) 205-8074.

SUPPLEMENTARY INFORMATION: This program announcement consists of six parts. Part I briefly discusses the importance of addressing the developmental needs of youth, especially those who live in socially and economically isolated communities, and

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania, NW., Washington, DC 20580.

provides background information on the Youth Gang Drug Prevention Program. Part II describes the programmatic priority area under which applications are being solicited. Part III describes the evaluation criteria that will be used to review grant applications and make funding decisions. Part IV describes the application process. Part V provides instructions for the development and submission of applications. Part VI provides information on the State Single Points of Contact and all the necessary forms and instructions for applying for a grant under this announcement. No additional materials are available or needed to submit an application.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

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Part I. General Information

A. Reframing the Youth Agenda

Today, as always, most American youth complete school, avoid committing or being victimized by violence, avoid substance abuse, and stay on track for a healthy and successful adulthood. Yet at the same time, too many youth have far less successful outcomes, and the rapid proliferation of youth gangs, alcohol and drug activity, and violence has become an ever-greater concern for youth themselves, their families, communities, and the broader public.

Public and private systems, such as schools and community programs that traditionally support the successful healthy development of children through adolescence to adulthood are underfunded and frequently unable to

keep pace with the changing developmental needs of youth. They are also increasingly asked to provide primary support to youth in response to the weakening role of the family in youth's lives.

Gangs and their violent activities are too often a lure for youth who perform marginally in or drop out of school. Approximately one quarter of all urban schools have dropout rates around 50 percent. Of the 400,000 young people who dropped out of high school between October 1989 and October 1990, one-third were unemployed in 1991. The relationship between dropping out of high school and unemployment is especially strong in socially and economically isolated communities. In the 50 largest U.S. cities in 1991, the higher the poverty rate of a census tract, the more likely adolescent males were to be unemployed and to have dropped out of school. While there is no definitive data on how many of these youth were involved in gangs, there is anecdotal data from FYSB grantees and other practitioners which suggest a strong correlation between school failure and gang involvement. The diminished opportunities and stressful environmental circumstances in socially and economically isolated communities coupled with the risk-taking behavior normally associated with adolescent development become critical obstacles for adolescents to overcome if they are to develop into healthy and positive adults.

Over the past decade we have seen ever increasing numbers of adolescents become involved in violent and illegal risk-taking behavior that negatively impacts on them, their families and communities. The following data exemplify this trend:

- In 1992, juveniles were responsible for 17.5 percent of all violent crime arrests.
- Between 1990 and 1992, the number of juveniles under age 15 arrested for violent crimes increased 25 percent.
- Arrests of juveniles under age 15 increased 23.2 percent for weapons violations and 18.8 percent for drug abuse violations in the most recent one year reporting period of the Uniform Crime Reports.

Youth Agenda Within the Context of the Social Environment

Promoting individual change is difficult in an environment that does not support positive and healthy outcomes. Likewise, effecting community- or neighborhood-level change outside the context of the wider

society is also difficult. For this reason, prevention strategies must be comprehensive, intensive and multi-dimensional, reaching across all aspects of a youth's social environment to effect individual change. At the same time, it is important to realize that individual change depends in part on changing community attitudes and norms.

Our traditional, categorical perspective has tended to ignore the major influence that the social environment has on the behavior and life outcomes of youth. It has also tended to ignore the vast social isolation and alienation from the wider society that many youth experience. Increasingly, we are becoming aware that youth living in areas with high concentrations of poverty, unemployment, weak family structures, poor role models and violence have fewer opportunities for successful outcomes than do their counterparts in other communities. The normal adolescent dependence on the peer environment is greatly exaggerated and increasingly dangerous in many of these communities. Youth with little or no family and/or community supports are frequently prone to involvement in activities that adversely affect their life outcomes, such as high rates of adolescent child bearing, gang involvement and school dropout.

Prevention strategies designed to counteract the attractions of destructive behaviors such as gang participation must take into account that as youth develop they need an environment that provides safety and comfort as well as challenging new opportunities for growth. It is our belief that the combination of a safe environment and access to opportunities and experiences allow youth to develop the self-esteem and decisionmaking abilities necessary to avoid non-constructive, delinquent, and dangerous behaviors and thereby exhibit constructive behaviors and participate in healthy activities. It is especially important that these opportunities be focused on 9 to 12 year olds and their families, a critical developmental stage from childhood to adolescence.

Flaws in the Present Response to These Needs

For several reasons, our programmatic responses have been unable to keep up with the burgeoning needs of youth, their families and communities. Among the reasons identified by practitioners and observers:

1. Public and community-based service systems are unable to compensate as families become more isolated from traditional sources of

support and as youth become more isolated from both families and communities. Often, parents are unable to provide their children with the necessary emotional, psychological and material support. In response, parents turn to underfunded and overburdened community agencies such as schools, day care centers and recreation centers to fulfill their children's social and developmental needs.

2. Publicly funded programs are too often defined in narrow categorical terms that fail to respond to the reality of youth's experiences, goals, strengths, and needs. Rather than providing youth a supportive environment that will help them develop into socially productive, healthy adults, we have developed a diversity of public and private programs that, too often, respond only to a small percentage of youth on a short-term basis and that provide fragmented funding for narrow categorical purposes.

3. Programs targeted to youth have been slow to acknowledge the developmental needs of youth and the effect of changes in social and economic structures on youth's life choices. In developing youth programs, we frequently fail to realize that adolescence is a developmental stage when youth typically experiment with different activities, distance themselves from family, identify more with peers, and develop more independent behaviors. Historically, youth programs have been focused on intervening once youth have participated in delinquent or negative behaviors, rather than on preventing these behaviors and working with youth during the critical transition stage from childhood to adolescence (ages 9 to 12).

Reframing the Youth Agenda to Respond to Youth's Needs

Recently, the Department of Health and Human Services along with the Departments of Justice, Education, Labor, and Housing and Urban Development participated in an effort aimed at identifying how to prevent youth from becoming involved in violence as perpetrators and/or victims. Discussions with those involved in youth issues, including representatives from programs, foundations, research institutions and universities, identified a set of core strategies that have been effective in involving youth in more socially positive and productive behaviors. They emphasized that first and foremost prevention strategies have to be grounded within a youth development framework rather than the usual problem-oriented approach. Included among their strategies are:

- Intervening early and providing sustained services to youth over a long period of time. Youth need to be connected to a stable force which can help them make a successful transition from childhood to adolescence and ultimately to adulthood. Too often youth in this critical age range of 9 to 12 are finding gangs the most stable, nurturing force in their lives.

- Involving youth in the formation and development of policies and programs that focus on their strengths, address their needs and reduce their involvement in violence and other destructive behaviors. The social environment in which youth develop is a critical factor affecting their perspective of the future and their connection to the broader society; thus, their environment must provide opportunities for youth to establish their self-worth and receive affirmation of their importance to society.

- Promoting the economic and social competence of youth; connecting them to their families, communities and society at-large; and fostering their ability to make positive contributions. Current society has developed no clear social or economic role for youth. As a result, it is difficult for youth to envision the positive contributions they can make as they move from adolescence to adulthood.

- Responding to youth as individuals, not merely as a monolithic group. Youth are diverse and have differing needs. They need services that are multi-disciplinary, gender-specific, age-appropriate, and culturally appropriate.

- Supporting the involvement of families (however they define themselves) in programs that respond to youth issues.

- Empowering community leaders and institutions in socially and economically isolated communities to play a more active role in guiding and assisting youth and in identifying and responding to the specific needs of youth in their communities. Local leaders must work collaboratively with families and other residents to change the overall attitudes about what is acceptable behavior in the community, and these attitudes and expectations must be communicated effectively to youth.

- Connecting youth services to existing institutions, particularly educational institutions, strengthens their role in the lives of youth, and enhances the ability of institutions to provide comprehensive and responsive care and education to youth.

Individual strategies alone, however, do not work. Communities must come together to identify the developmental

needs of their local youth and how these needs can best be addressed.

B. Legislative Authority and Funding History

Congress enacted the Drug Education and Prevention Relating to Youth Gangs (Youth Gang Drug Prevention) Program as part of the Anti-Drug Abuse Act of 1988. See 42 U.S.C. 11801-11806. The legislation specifically identifies the Administration on Children, Youth and Families (ACYF) as the administering agency.

The program received its first appropriation of \$15 million in Fiscal Year 1989. In response to ACYF's first announcement soliciting proposals for the Youth Gang Drug Prevention Program, applications were received from public and private agencies in 36 States and the District of Columbia.

The ACYF solicited proposals again in Fiscal Years 1990 and 1992, and applications again were received from large and small cities, suburbs and rural areas all over the country.

Since 1989, ACYF has awarded almost \$76.5 million to fund 112 State and local efforts to respond to the nation's youth gang problem. These grants ranged from \$1,000,000 community-based consortia projects in large urban centers to \$50,000 planning projects in small communities.

C. Purpose and Goals of the Youth Gang Drug Prevention Program

The Administration on Children, Youth and Families (ACYF) has implemented the Youth Gang Drug Prevention Program to help communities experiencing gang crime and violence take a proactive approach to halting the escalation of illegal gang activity by funding prevention activities targeting youth in at-risk situations. Prevention is increasingly at the heart of local efforts to deal with an emerging gang problem. It recognizes that gangs are a symptom of larger community problems, such as poverty, unemployment, and feelings of disenfranchisement due to race or socio-economic status. In jurisdictions with a chronic gang problem, prevention of youth involvement in gangs remains a critical strategy for keeping the situation from worsening over time.

The Family and Youth Service Bureau's demonstration grant efforts are designed to:

- Expand our understanding of why youth become involved in gangs and in behaviors leading to gang participation and similarly destructive outcomes. Of equal importance is to identify factors which help youth develop positively especially through the difficult

transition from childhood to adolescence and into adulthood;

- Demonstrate and assess various methods of preventing the further recruitment and involvement of youth in at-risk situations in gang activities; and

- Develop successful, replicable approaches that prevent youth involvement in gangs, illegal drug activities and related violence and delinquency.

D. Models and Programmatic Approaches of Youth Gang Drug Prevention Grantees

Since there is no single cause for youth involvement in gangs, there is no single prevention model. Previously funded Youth Gang Drug Prevention Program grantees have implemented a number of different models and strategies designed to meet various prevention goals. Evaluation results of some of these previously funded projects suggest that those that work with the same children, youth and families over several years have a greater potential for positively affecting their lives than projects which focus on short-term (weeks, months, one-year) interventions. These results and feedback from grantees, coupled with the recommendations of the Inter-Departmental youth workgroup, have led to our refocusing our prevention efforts toward a youth development approach. Gang participation should not be viewed as a single problem in and of itself, but rather as part of a multi-dimensional array of risks facing youth. Many youth do not have the positive support systems necessary to transition successfully into adolescence and later into adulthood. Prevention and intervention strategies should seek to establish or strengthen neighborhood and family-based support systems that will enhance youth's potential for success.

D.1. Gang Prevention Models

Community-based consortia: A major emphasis of the Youth Gang Drug Prevention Program has been on supporting the development of community-based consortia to conduct innovative, comprehensive approaches to the current and emerging problems of youth gangs and their involvement with illicit drugs. Each consortium is a broad-based partnership which draws upon the resources, expertise, energies and commitments of many different groups within the community. These groups represent both the public and private sectors and include representatives of human service agencies, schools, juvenile justice system, mental health

agencies, housing authorities, businesses, churches, media, and community-based organizations. The organizational structures and operational procedures of the community consortia vary, but the most promising consortia brought together a broad array of public and private agencies, community groups and youth to design and implement their local prevention strategies. As important as the comprehensive mix of services that these agencies brought together was the consortia's focus on youth gang prevention as a community-wide issue in which all parties have a stake.

Community planning efforts: In order to help communities with emerging gang problems and those with established gangs but with no cohesive prevention strategies, 12 community planning grants were awarded in Fiscal Year 1990. It was hoped that by the end of the two-year funding period, these grantees would be able to build the framework for successful consortia and/or other prevention strategies. The most promising grantees focused planning and community organizing strategies on local neighborhoods or target areas within larger communities. One grantee began its planning efforts by conducting a needs assessment to identify the specific high-need neighborhoods where it would focus its strategy development. Another grantee found that different problems and issues required different approaches and levels of organizing groups. For example, school issues required a neighborhood group organized around the school feeder areas, while a city-wide steering committee was essential for garnering the necessary political support and media attention.

These grantees centered their activities around planning and organizing efforts, not on direct service delivery to youth and families. In several cases, these planning grantees were prohibited by their own charters from delivering direct services or came to a realization in the course of the project that they could not effectively facilitate planning while at the same time delivering services. One grantee developed action plans that addressed the specific needs of eight neighborhoods in a large inner city. Various components of these action plans were implemented, some as service programs and others as pilot projects to test their viability. Perhaps more important than the services and projects, this planning effort enabled the organizing group and neighborhood action teams to market their needs and proposed responses more effectively to other funding sources.

D.2. Programmatic Approaches

Based on the experience of the Youth Gang Drug Prevention Program, we have found that no single prevention model fits the needs of all communities. Therefore, each community must assess its own needs, strengths, weaknesses, and resources and design a model which has the greatest potential for success. In developing individually appropriate models, communities should take advantage of adapting and using programmatic approaches which have shown promise in other communities. The following approaches are meant to be illustrative, not exhaustive.

- Many agencies focused on community organizing activities in an effort to assist the community in solving its own problems. For example, one previously-funded agency instituted community support groups which met monthly on block and school safety issues and developed a newsletter and a youth resource directory. Another agency used block-by-block organizing to mobilize neighborhood residents against drug trafficking and gang violence. Residents operated phone-trees to gather information on new drug trafficking sites, graffiti or gang meeting sites. This information was then relayed to law enforcement officials. Residents also marched as a group through these areas to bring unwanted publicity to the dealers and gangs.

- Other grantees centered many of their activities around or in the local schools. Many grantees conducted tutoring, recreation, outward bound activities, and cultural programs on school grounds or in nearby locations after normal school hours or during summer vacation. One grantee instituted school-based leadership clubs and community-based outreach clubs. Many grantees developed cooperative agreements with schools to use their facilities after school hours and on weekends to provide a wide range of recreational, social and cultural activities for youth. In another community, a grantee worked with two elementary schools to implement a self-esteem curriculum which included planning for a successful journey, maintaining a healthy attitude and using common sense.

- Another popular approach tested by many of the grantees involved the use of empowerment strategies with families. The intent of the approach was to draw on the strength of the family and its values in promoting the healthy development of youth. Parenting classes were conducted to help parents understand and use effective techniques

for dealing with discipline, setting goals, understanding their responsibilities and rights and developing positive relationships with their children. One grantee established a School for Parents. In order to develop an effective curriculum, the instructors met with the children of the enrollees to explore their particular needs. These needs provided the basis for the content of the school sessions for the parents.

- Some grantees designed positive activities that were centered around cultural values to help youth accomplish the transition from childhood to adulthood. One grantee developed a culturally-based leadership training program for 13- to 18-year old youth. To participate in the program, youth must be recommended by a faculty member, maintain a 2.0 grade point average, write an essay and have a parent/guardian attend an orientation meeting. The youth attended a 60-hour classroom course, including a 3-day live-in seminar, and were evaluated during a 60-hour field experience. The curriculum included philosophy and styles of leadership, perceptions and beliefs, group process and dynamics, individual and group assessment processes, and yin/yang theory.

The common elements apparent in successful projects are the focus on the developmental needs of youth and their families and an emphasis on the provision of appropriate positive developmental opportunities for them.

Part II. Priority Area—Community Planning Grants

Eligible applicants: Any State, unit of local government, combination of units of local government, public or nonprofit private agency, organization, institution, other nonprofit entity or individual is eligible to apply for these funds. Successful applicants under this competition will be eligible to compete for five year grants to implement the plans they develop.

Grantees with current Youth Gang Drug Prevention Community-Based Consortia grants (funded under the FY 1992 announcement) are not eligible to apply under this announcement.

Program purpose, goals, and objectives: The Administration on Children, Youth and Families (ACYF) will award approximately 10-30 community planning grants during Fiscal Year 1994. The purpose of these grants is to help community and neighborhood groups organize into formal coalitions which will be responsible for developing five-year action plans that concentrate prevention resources on a specific socially and economically isolated neighborhood or

target area. Only those applicants who receive planning grants under this announcement and who perform satisfactorily will be eligible to apply for the 8 to 15 implementation grants, which ACYF plans to announce in Fiscal Year 1995, subject to the availability of funds.

Plans developed under this priority area should articulate a vision for youth and include community-wide strategies and interventions designed to change the environment, circumstances and attitudes which put youth at risk of unhealthy and destructive behavior so that these youth may develop into healthy, productive and responsible adults.

The planning processes used by the coalitions should be characterized by broad consultation and involvement of youth, families, businesses and community organizations in identifying the developmental needs of youth; deciding what existing services and strategies are available and effective in addressing these needs; identifying gaps in services; and, how these gaps can best be addressed, while strengthening the permanent institutions (e.g., school, social, community health and justice systems) dedicated to the development of individuals and communities. The coalitions will also address the communities' particular youth violence problems, and the resources that can be brought to bear so that the developmental needs of youth are met and the problems of violence can be alleviated.

Successful grantees under this announcement must participate in activities leading to a rigorous third-party evaluation of the program strategies to be funded under the Fiscal Year 1995 announcement. Active participation in the evaluation will be a requirement of program implementation funding. Evaluation activities will be funded by the Administration for Children and Families and will focus on measuring the interventions' effects on positive community and behavioral change and the processes by which these changes take place.

The specific goals of this priority area are to:

- Demonstrate the feasibility of developing comprehensive youth development policies and programs targeting socially and economically isolated communities;
- Demonstrate the viability of supporting concerted planning efforts prior to committing Federal resources to long-term demonstration and evaluation efforts;
- Demonstrate the effectiveness of awarding planning grants that are

accompanied by intensive training and technical assistance to narrow the field of eligible applicants for subsequent implementation demonstration grants;

- Evaluate whether conducting a comprehensive multi-agency planning effort leads to the development of more effective strategies for integrating and coordinating efforts to address the developmental needs of youth and, thereby, the issues related to youth violence;

- Rigorously evaluate whether comprehensive youth development policies and strategies are effective in reducing the amount and intensity of youth violence in targeted socially and economically isolated neighborhoods; and

- Identify critical elements that are needed within each community to positively impact community norms and to increase the opportunities for youth to develop into adults with a positive future.

Background: Since 1989 the ACYF has funded a variety of activities aimed at aiding communities in the development of strategies for helping youth avoid illegal gang and drug activities and adopt positive lifestyles. Based on the experience of the youth gang consortia and planning grantees, it is clear that gang prevention is only one part of a continuum of integrated services that promotes healthy lifestyles for children and youth ranging in age from pre-school through early adulthood. This announcement supports the creation of community coalitions and the development of five-year community action plans which focus on comprehensive strategies that target the broader needs and experiences of youth in high-risk situations. The goal of these action plans is to concentrate services and interventions so that the day-to-day experiences of youth are affected. This requires focusing services on limited areas such as specific neighborhoods or groups of small community areas.

The community action plans developed by the coalitions must identify a continuum of services in specifically defined socially and economically isolated neighborhoods that will meet the developmental needs of the youth residing there and foster behaviors which will enable youth to function positively both within and outside their community. The plan should incorporate existing as well as proposed prevention services aimed at 9 to 12 year olds and their families. These include, but are not limited to, educational enrichment, tutoring, recreational activities, conflict mediation, individual and family

counseling, cultural enrichment, skills training, employment services/job counseling, support groups, mentoring, alcohol and drug abuse prevention education and parenting skills.

The plan should address existing service delivery systems, their adequacy, and the manner of involvement of a variety of organizations representing the disciplines of education, social services, health and mental health, labor and housing in the community. The plan must indicate how services will be provided to meet the developmental needs of youth within the context of their families, their communities and the broader society in a manner that is culturally appropriate both in terms of race/ethnicity and family dynamics.

The coalitions will also be responsible for cooperating with research and evaluation activities to be funded and coordinated by ACYF. Willingness and commitment to participate in a rigorous evaluation of the effectiveness of program services will be a critical consideration in the award of the FY 1995 implementation grants.

Training and technical assistance (T&TA) funded by ACYF will be provided to planning grantees. The T&TA will include information on action planning, consensus building, and the developmental needs of youth and will include training on violence prevention and intervention methods.

These are not service delivery grants. Applications that propose to deliver services will not be considered for funding. Agencies receiving funds under this priority area shall not use these funds for direct service provision to youth or families.

Successful applicants who perform satisfactorily under the terms of this grant may be invited to apply for five-year grants to assist them in implementing the action plan they develop. The community action plan will become part of an implementation proposal they will develop and submit to this agency in response to a future announcement of the availability of funds for implementation grants. Subject to the availability of funds, approximately 8-15 implementation grants will be awarded in Fiscal Year 1995.

Part III. Evaluation Criteria

The five criteria that follow will be used to review and evaluate each application and should be used in developing the program narrative. The point values following each criterion heading indicate the numerical weight each criterion will be accorded in the review process. In the section following

the Evaluation Criteria are detailed descriptions of the minimum requirements for project design, in terms of each criterion. The Program Narrative information provided by the applicant in response to the priority area description identified in Part II of this announcement should be organized and presented according to these five evaluation criteria.

Criterion 1. Objectives and need for assistance (15 Points). Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the goals or service objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Give a precise location of the project site(s) and area(s) to be served by the proposed project. Maps or other graphic aids may be attached.

Criterion 2. Results or benefits expected (20 Points). Identify the results and benefits to be derived from the project. Estimate the number and characteristics of the youth population this project will possibly affect in the future as a result of implementation of the community plan and the nature of the changes in services expected. Identify the kinds of data to be collected and maintained.

Criterion 3. Approach (35 Points). Outline a plan of action pertaining to the scope of the project and detail how the planning coalition's work will be accomplished. Describe any unusual features of the project, such as extraordinary social and community involvement. Explain the planning methodology that will be used and how the objectives listed in Objectives and Need for Assistance will be achieved.

Criterion 4. Staff background and organizational experience (20 Points). List each organization, consultant, or other key individual(s) who will work on the project along with a short description of the nature of their effort or contribution. Summarize the background and experience of the project director and key project staff and the history of the organization(s). Demonstrate the ability to effectively manage the project including the ability to lead community planning/organizing efforts and to coordinate activities with other agencies. (Applicants may refer to the staff resumes and to the Organizational Capability Statement included in the submission.)

Criterion 5. Budget appropriateness (10 Points). Demonstrate that the project's costs are reasonable in view of the anticipated results and benefits.

(Applicants may refer (1) to the budget information presented in Standard Forms 424 and 424A and in the associated budget justification, and (2) to the results or benefits expected as identified under Criterion 2.)

Minimum requirements for project design: As part of addressing the evaluation criteria outlined above, each applicant must respond to the following items in the program narrative section of their application.

Objectives and Need for Assistance

- Identify the geographic area that the planning effort will target. Describe the targeted area, provide data on its general population and explain what makes the area an identifiable community or neighborhood. The area must have boundaries recognized by the residents in the community and be small enough to allow a concentration of resources that result in an appreciable difference for the youth in the community as a result of the proposed project.

- Describe the developmental needs of youth in the target community, the known strategies and services currently in place to address these needs and preliminary views of gaps in current plans and services.

- Discuss the emerging or current youth gang and violence problems and prevalence of other destructive behaviors among youth in the target community. Provide data on the number, age, gender, ethnic/cultural background of youth in the target area, as well as data on family characteristics and dynamics, drug-related youth gang activity, and other non-constructive and health-compromising activities of community youth.

- Describe the goals and objectives of the proposal and how the proposal builds upon or differs from previous planning efforts.

- Indicate how this proposal builds upon the existing service delivery systems (e.g., health, mental health, child welfare, substance abuse) and how it could result in more relevant and/or expanded service delivery capabilities in the targeted area.

Results and Benefits

- Describe how this proposal will result in the development of a five-year action plan that describes the specific strategies and activities that the coalition will undertake to address the developmental needs of youth and to prevent or intervene in youth violence, especially as it relates to youth at-risk of or involved with gang activity and other dangerous outcomes.

- Describe how this effort will expand our knowledge and

understanding of the critical issues surrounding: (1) Identification of models and strategies that will serve to meet the developmental needs of youth, (2) the circumstances and factors in the community which contribute to socially unproductive and destructive youth behavior and which will be affected by this effort, (3) the circumstances and factors in the community that contribute to positive youth development, (4) youth gang members, their families, and youth at risk of gang participation or other violent and health-compromising conduct in the community, and (5) how individuals' behaviors affect the overall health of the community or neighborhood.

- Estimate the number and characteristics of the youth population this project will possibly affect in the future as a result of implementation of the community action plan and the nature of the change in strategies or services expected.
- Describe how the quality of the targeted community is expected to improve because of the project.
- Provide evidence that the planning coalition can and intends to generate the financial, programmatic, policy and other types of support and commitments that will be required to implement the action plan once it is developed.
- Provide evidence that the planning coalition can secure the support and participation of youth, families, and community members in this effort.

Approach

- Describe a process for conducting an in-depth needs assessment of the target community following grant award.
- Describe what makes the proposal innovative.
- Describe the planning process to be used, including methodology, timelines and task charts as well as a discussion of why this methodology was chosen as most appropriate for the youth and families in the targeted community.
- Indicate how the planning effort will be documented as it unfolds so as to communicate information on successes and lessons learned for dissemination to and use in other communities.
- Describe planning activities which may involve locally sponsored forums or hearings to gather citizen and youth input and reaction, data collection and analysis regarding the extent of youth violence, community assessments of community needs and available resources, and development of strategies to access foundation, local, State and Federal resources.

- Describe the applicant's ability to coordinate with other Federally-funded programs which are State or locally administered. The applicant should specifically address the proposed inter-relationship between this effort and Family Support and Family Preservation State Planning Councils, National Service Projects, Empowerment Zones and Enterprise Communities, where applicable.

- In addition to the agencies mentioned above, identify and describe the proposed role of additional groups or organizations within the community such as neighborhood associations, churches, youth groups, local civic organizations, local businesses and community-based nonprofit organizations, as well as local, county or State units of government that might also be invited to participate as coalition members. Identify strategies for encouraging them to actively participate.

- Describe the applicant's ability to provide leadership and facilitate coordination and cooperation among local education, juvenile justice, law enforcement, employment and social services agencies; drug abuse referral, treatment and rehabilitation programs; mental health and other health care providers for the purposes of producing a plan which attempts to meet the developmental needs of youth; helping youth develop productive and healthy lifestyles; and preventing or reducing the participation of youth in the illegal and violent activities of gangs.

- Describe in detail how the applicant will achieve each of the goals and objectives listed above in Objectives and Need for Assistance.

- Provide: (1) An assurance that the applicant will cooperate with any data collection, research or evaluation efforts independently funded and sponsored by the Administration for Children and Families and (2) a commitment to participate in a rigorous evaluation of the effectiveness of proposed program services should the applicant be chosen for an implementation grant in FY 1995.

- Provide assurance that the applicant will cooperate with, and participate in the activities of, training and technical assistance providers sponsored by the Administration for Children and Families.

Staff Background and Organizational Experience

- Identify skills and experience criteria, as well as a recruitment strategy, that will be used for hiring the project director and other key staff.

- Demonstrate that the project director and/or other key staff have the

knowledge and experience needed to participate in and collaborate with a third-party evaluator.

- Provide information on the proposed project director and other key staff regarding skills and experience in community planning/organizing efforts and knowledge of youth and family issues or programs.

- Demonstrate the applicant agency's ability to work effectively with the community and to organize and coordinate a community-wide planning effort.

- Include letters of endorsement and/or commitment that show evidence of broad youth, family and community support in the geographic area to be served by the plan, specifying any type of direct involvement that organizations or individuals will have with the planning process and indicating the level of effort committed to the project.

Budget Appropriateness

- Discuss and justify the costs of the proposed project in terms of the size of and conditions in the target area that the plan will affect.

- Describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement and accurate accounting of funds received under this program announcement.

- Include in the proposed budget a four-day trip to Washington, DC, for the project director and four other key staff persons to attend a grant implementation training session. For planning purposes the training session will be held during the first quarter of the grant project period (October 1–December 31, 1994). The applicant should plan for covering travel and per diem expenses; lodging will be prepaid by ACYF's contractor.

- Include in the proposed budget funds for travel to a Family and Youth Services Bureau-sponsored national conference in the Washington, DC, area during the second quarter of Fiscal Year 1995 (January–March 1995). At a minimum, the project director must attend this three-day conference. All applicants must include in their budgets funds for this conference.

Duration of project: This announcement solicits applications for one-year planning projects. Grant awards, made on a competitive basis, will be for a one-year (12-month) budget period. Grantees who perform satisfactorily will be eligible to compete for five-year implementation grants contingent upon the availability of funds.

Maximum Federal share and grantee share of the project: The maximum

Federal share of project costs is \$100,000 for 12 months. The applicant share of project costs is 25 percent of total project costs. For example, a project requesting \$100,000 in Federal funds must include a match of at least \$33,333 (25 percent of a total project cost of \$133,333).

The non-Federal share may be met by cash or in-kind contributions. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. Applicants which do not provide the required percentage of non-Federal share will not be funded.

Part IV. Application Process

A. Application Requirements

To be considered for a Youth Gang Drug Prevention grant, each application must be submitted on the forms provided at the end of this announcement (see Part VI, Appendix B of this announcement) and in accordance with the guidance provided herein. The application must be signed by an individual authorized both to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

All applicants must indicate in their applications their willingness to fully cooperate in any data collection, research and/or evaluation efforts mandated by ACF.

If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization which will have legal responsibility for the grant.

B. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub.L. 96-511, as amended, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record-keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications by OMB.

C. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the E.O., States may design their own processes for reviewing and

commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 17 jurisdictions need take no action regarding E.O. 12372.

Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants must contact their SPOCs as soon as possible to alert them to the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they must be addressed to: Youth Gang Drug Prevention Program, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor East, OFM/DDG, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Part VI, Appendix A of this announcement.

D. Availability of Forms and Other Materials

A copy of the forms required to be submitted as part of each application for a youth gang drug prevention grant, and instructions for completing the application, are provided in Part VI, Appendix B. Addresses of the State Single Points of Contact (SPOCs) to which applicants must submit review

copies of their proposals are listed in Part VI, Appendix A.

E. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria and the Minimum Requirements for Project Design contained in Part III of this announcement. This review will be conducted in Washington, DC, by teams of experts knowledgeable in the areas of youth development and family support, youth gang prevention programs and other youth service programs. Applications for grants will be reviewed as a part of a national competition.

The experts will review the applications based on the Evaluation Criteria and the specific Minimum Requirements for Project Design contained in Part III of this announcement and will assign a score to each application. The results of the competitive review will be analyzed by Federal staff who will select those applications to be recommended for funding to the Commissioner, ACYF.

The Commissioner will make the final selection of the applicants to be funded. As required by the Anti-Drug Abuse Act of 1988, priority for funding under the Youth Gang Drug Prevention Program will be given to applicants who propose to carry out projects and activities (1) in geographical areas in which frequent and severe drug-related crimes are committed by gangs whose membership is composed primarily of youth, and (2) that the applicant demonstrates broad support of community-based organizations in such geographical areas.

In addition to scores assigned by non-Federal reviewers, consideration also will be given to adequate geographic distribution of projects and the Commissioner may show preference for applications proposing projects in areas that would not otherwise be served. The Commissioner also may elect to consider an applicant's past performance in providing services to at-risk youth and also may elect not to fund any applicants having known management, fiscal or other problems which make it unlikely that they would be able to perform effectively.

Grant awards will be made by September 30, 1994. Successful applicants will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support will be given, the non-

Federal share to be provided, and the total project period for which support is contemplated.

Organizations whose applications will not be funded will be notified of that decision in writing by the Commissioner of the Administration on Children, Youth and Families. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Part V. Application Assembly and Submission

A. *Contents of application.* Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4-88) (page i).
2. Budget Information (Standard Form 424A, REV 4-88) (pages ii-iii).
3. Budget Justification (Typed on standard size plain white paper) (pages iv-v).
4. Assurances—Non-Construction Programs (Standard Form 424B, REV 4-88) (pages vi-vii).
5. Certification Regarding Lobbying (page viii).
6. Project Summary Description (page ix).
7. Program Narrative Statement (pages 1 and following; 30 pages maximum, double-spaced, at least half-inch margins).

Special Note: Applicants are strongly encouraged to limit the program narrative statement portion of the application to 30 double-spaced pages. Pages exceeding this limit will be discarded and not reviewed by panel.

8. Organizational Capability Statement (pages OC-1 and following; 3 pages maximum).
9. Supporting Documents (pages SD-1 and following; 10 pages maximum, exclusive of letters of support or agreement).

B. Instructions for Preparing Application Components

Standard Forms 424 and 424A: Follow the instructions in Part VI, Appendix B. In Item 8 of Form 424, check New. In Item 10 of the 424, clearly identify the Catalog of Federal Domestic Assistance Program Number and Title for the program for which funds are being requested (93.660, Youth Gang Drug Prevention Program).

Budget justification: Provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, that will be used for this project.

Standard Form 424B, Certification Regarding Drug-Free Workplace, Certification Regarding Debarment, and

Certification Regarding Lobbying: Of these forms, only the Standard Form 424B and the Certification Regarding Lobbying need to be signed and returned with the application. By signing and submitting its application, the applicant is certifying its compliance with the requirements set forth in the attached Drug-Free Workplace and Debarment certification notices.

Project summary description: Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424 and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 1,200 characters, including words, spaces and punctuation. These 1,200 characters become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products (such as plans, training materials, manuals, etc.) that will result from the proposed project. The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

Program Narrative Statement: Use the Evaluation Criteria in Part III as a way to organize the Narrative. Be sure to address all the specifics contained in the Minimum Requirements for Project Design. The narrative section is limited to 30 typed pages, double spaced, printed only on one side, with at least 1/2 inch margins. Pages over the 30-page limit will be discarded and not reviewed by the panel. Past attempts by applicants to exceed page limits or to circumvent space limitations by using very small print have resulted in negative responses from reviewers. It is, therefore, in the best interest of applicants to ensure that the narrative statement is easy to read, logically developed in accordance with the preceding evaluation criteria and minimum requirements and adheres to page limitations.

Organizational Capability Statement: Applicants must provide a description (no more than three pages, double-spaced) of how the applicant agency is organized; its expertise in the area of youth development and/or violence prevention; its ability to bring together a broad coalition of agencies and

organizations; and the planning and management capabilities it possesses. Provide an organizational chart showing the relationship of this project to the current organization. If the agency is a recipient of funds from the Administration on Children, Youth and Families for programs other than that applied for in this application, identify those programs and explain the extent to which they might be involved in this project.

Supporting Documentation: The maximum for supporting documentation is 10 pages, double spaced, exclusive of letters of support or agreement. These documents might include resumes, newspaper clippings, and evidence of the program's efforts to coordinate youth services at the local level. Documentation over the ten page limit will not be reviewed. Applicants may include as many letters of support or agreement as are appropriate.

C. Application Submission

To be considered for a grant, each applicant must submit one signed original and two additional copies of the grant application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in *black* ink. Each copy must be stapled (back and front) in the upper left corner. All copies of a single application must be submitted in a single package.

Because each application will be duplicated by the government, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, fasten or in any way separate subsections of the application, including supporting documentation.

1. Closing Date for the Receipt of Applications

The closing date for submission of applications for the grant program contained in this announcement is July 8, 1994. Applications may be mailed to the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW, 6th Floor East, OFM/DDG, Washington, DC 20447.

Hand delivered applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW,

6th Floor, OFM/DDG, 901 D Street, SW, Washington, DC 20447.

Envelopes containing applications must clearly indicate the specific program that the application is addressing: Youth Gang Drug Prevention Program.

2. Deadline for Submission of applications

a. *Deadline.* Applications will be considered as meeting the deadline if they are either:

i. Received on or before the deadline date at the above address, or

ii. Sent on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM 1-62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.)

b. *Late applications.* Applications which do not meet the criteria stated above are considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

c. *Extension of deadline.* The granting agency may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

3. Checklist for a Complete Application

- ___ One original application signed in black ink and dated plus two copies;
- ___ A completed SPOC certification with the date of SPOC contact entered in item 16 on page 1 of SF 424, if applicable;
- ___ SF 424 (The original application must have the word ORIGINAL hand printed in bold block letters at the top margin of its SF 424);
- ___ SF 424A;
- ___ Budget Justification;
- ___ SF 424B;
- ___ Certification Regarding Lobbying;
- ___ Project Summary Description;
- ___ Program Narrative Statement (maximum of 30 double-spaced pages);
- ___ Organizational Capability Statement (maximum of three pages double-spaced); and
- ___ Supporting Documents (maximum of 10 pages double-spaced).

(Catalog of Federal Domestic Assistance Number 93.660, Youth Gang Drug Prevention Program)

Dated: April 21, 1994.

Olivia A. Golden,
Commissioner, Administration on Children,
Youth and Families.

Appendix A—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, PO Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682-1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866-2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street NW, Suite 500, Washington DC 20005, Telephone (202) 727-6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656-3855

Illinois

Steve Klockenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782-1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564-2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373-7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960-2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687-4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613.

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New

Jersey 08625-0803, Telephone (609) 292-9025.

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640, FAX (505) 827-3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603-8003, Telephone (919) 733-7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505-0170, Telephone (701) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656, Please direct correspondence and

questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, Attn: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538-1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia

Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266-0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777-7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Please direct correspondence to: Linda Clarke, Telephone (809) 774-0750.

BILLING CODE 4184-01-P

Appendix B
APPLICATION FOR
FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: <i>Application</i> <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		<i>Preapplication</i> <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE				State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY				Federal Identifier	
5. APPLICANT INFORMATION					
Legal Name:			Organizational Unit:		
Address (give city, county, state, and zip code):			Name and telephone number of the person to be contacted on matters involving this application (give area code):		
6. EMPLOYER IDENTIFICATION NUMBER (EIN): <input type="text"/> <input type="text"/> - <input type="text"/>			7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/>		
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____			A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) _____		
9. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>			10. NAME OF FEDERAL AGENCY:		
11. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: TITLE:			11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:		
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):					
13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:			
Start Date	Ending Date	a. Applicant		b. Project	
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?			
a. Federal	\$.00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____			
b. Applicant	\$.00	b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW			
c. State	\$.00				
d. Local	\$.00				
e. Other	\$.00				
f. Program Income	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?			
g. TOTAL	\$.00	<input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No			
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED					
a. Typed Name of Authorized Representative		b. Title		c. Telephone number	
d. Signature of Authorized Representative		e. Date Signed			

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State is applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal Identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
 - "New" means a new assistance award.
 - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
 - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities)
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by

each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) For Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B — BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (\$)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	\$
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	\$
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	\$	\$	\$	\$	\$
13. Federal					
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	
17.					
18.					
19.					
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets, if Necessary)					
21. Direct Charges:	22. Indirect Charges:				
23. Remarks					

SF 424A (4-88) Page 2
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General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a) and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Column (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6i in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

- Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
- Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will established safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:

(a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin;

(b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps;

(d) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing;

(i) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and

(j) The requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air

Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components for the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.)

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

BILLING CODE 4184-01-P

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

Check if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." "provided below without

modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or

employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is an material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature _____

Title _____

Organization _____

Date _____

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):		b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify: _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____	14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) SF-LLL-A, if necessary)	
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

Statement of Organization, Functions and Delegations of Authority

AGENCY: Administration for Children and Families, DHHS.

SUMMARY: Part K, Chapter K (Administration for Children and Families) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (56 FR 42332) is amended to reflect the changes in Chapter KR, The Office of Refugee Resettlement (ORR) (56 FR 42349). Specifically, to delete the functional responsibility of providing information and referral services and other services to refugees and entrants, service providers and state and federal agencies solely in the state of Florida.

The change is as follows:

Amend KR.20 Functions. Paragraph A to delete it in its entirety and replace it with the following:

KR.20 Functions. A. Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out ORR's mission and providing direction, leadership, guidance and general supervision to the component's of ORR. The Deputy Director assists the Director in carrying out the responsibilities of the Office. Within the Office of the Director, administrative staff assist the Director and Deputy Director in managing the formulation of program and salaries and expenses budgets; and in providing administrative, personnel and data processing support services.

The Office coordinates with the lead refugee and entrant program offices of other federal departments; provides leadership in representing refugee and entrant programs, policies and administration to a variety of governmental entities; acts as the coordinator of the total refugee and entrant resettlement effort for ACF and the Department; and coordinates and provides leadership for policies and administration of the legalization assistance grants to a wide variety of public and private interests.

Effective Date: May 3, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 94-11137 Filed 5-6-94; 8:45 am]

BILLING CODE 4184-01-P

Food and Drug Administration

[Docket No. 94N-0161]

Drug Export; RIBA™ HIV-1/HIV-2 Strip Immunoblot Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Chiron Corp. has filed an application requesting approval for the export of the biological product RIBA™ HIV-1/HIV-2 Strip Immunoblot Assay (SIA) to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM-660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-1070.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the *Federal Register* within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Chiron Corp., 4560 Horton St., Emeryville, CA 94608-2916, has filed an application requesting approval for the export of the biological product RIBA™ HIV-1/HIV-2 Strip Immunoblot Assay (SIA) to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain,

Sweden, Switzerland, and the United Kingdom.

The RIBA™ HIV-1/HIV-2 Strip Immunoblot Assay (SIA) is an in vitro qualitative enzyme immunoassay for the detection of antibodies to Human Immunodeficiency Virus Types 1 and 2 in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on March 11, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 19, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: April 25, 1994.

James C. Simmons,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 94-11069 Filed 5-6-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 84N-0102]

Cumulative List of Orphan-Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a cumulative list of designated orphan drugs and biologics as of December 31, 1993. FDA has announced the availability of previous lists, which are brought up-to-date monthly, identifying the drugs and biologics granted orphan-drug designation pursuant to the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: Copies of the list of current orphan-drug designations and of any

future lists are or will be available from the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and the Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4718.

FOR FURTHER INFORMATION CONTACT: Peter Vaccari, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4718.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and acts on applications submitted by sponsors seeking orphan-drug designation under section 526 of the act (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a list of designated orphan drugs and biologicals. This list is made current on a monthly basis and is available upon request from the Office of Orphan Products Development (contact identified above). At the end of each calendar year, the agency publishes an up-to-date cumulative list of designated orphan drugs and biologicals, including the names of designated compounds, the specific disease or condition for which the compounds are designated, and the sponsors' names and addresses. The cumulative list of compounds receiving orphan-drug designation through 1988 was published in the *Federal Register* of April 21, 1989 (54 FR 16294). This list is available on request from the Dockets Management Branch (address above). Those requesting a copy should specify the docket number found in brackets in the heading of this document.

The list that is the subject of this notice consists of designated orphan drugs and biologicals through December 31, 1993, and, therefore, brings the March 2, 1993 (58 FR 12041) publication up to date.

The orphan-drug designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan drug or biological must apply for orphan-drug designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested. (See 53 FR 47577, November 23, 1988.) Copies of the regulations (see 57 FR 62076, December 29, 1992) for use in preparing an application for orphan-drug designation may be

obtained from the Office of Orphan Products Development (address above).

The names used in the cumulative list for the drug and biological products that have not been approved or licensed for marketing may not be the established or proper names approved by FDA for those products if they are eventually approved or licensed for marketing. Because these products are investigational, some may not have been reviewed for purposes of assigning the most appropriate established or proper name.

Dated: May 3, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-11070 Filed 5-6-94; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the Statutory Funding Preference for Allied Health Project Grants for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory funding preference for fiscal year (FY) 1994 Allied Health Project Grants funded under the authority of section 767, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102-408, dated October 13, 1992.

Purposes

Section 767 authorizes the award of grants to assist in meeting the costs associated with expanding or establishing programs that will increase the number of individuals trained in allied health professions. Programs and activities funded under this section may include:

- (1) Those that expand enrollments in allied health professions with the greatest shortages or whose services are most needed by the elderly;
- (2) Those that provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences;
- (3) Those that establish community-based allied health training programs that link academic centers to rural clinical settings;
- (4) Those that provide career advancement training for practicing allied health professionals;

(5) Those that expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained;

(6) Those that develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics;

(7) Those that expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly;

(8) Those that expand or establish demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research; and

(9) Those that provide financial assistance (in the form of traineeships) to students who are participants in any such program; and

(A) who plan to pursue a career in an allied health field that has a demonstrated personnel shortage; and

(B) who agree upon completion of the training program to practice in a medically underserved community; that shall be utilized to assist in the payment of all or part of the costs associated with tuition, fees and such other stipends as the Secretary may consider necessary.

To maximize program benefit, programs that provide financial assistance in the form of traineeships to students will not be considered for funding in FY 1994.

Funding Preference

The statutory preference identified in section 767(b)(2) and the statutory preference identified in section 791(a) of the PHS Act have been combined in the following preference which will be applied to Allied Health Project Grants for fiscal year 1994:

(A) expand and maintain first-year enrollment by not less than 10 percent over enrollments in base year 1992; or
(B) demonstrate that not less than 20 percent of the graduates of such training programs during the preceding 2-year period are working in medically underserved communities (high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; OR

(C) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

A notice which proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory funding preference for Allied Health Project Grants was published in the *Federal Register* on November 18, 1993 at 58 FR 60863. No comments were received during the comment period. Therefore, the minimum percentages for "high rate" and "significant increase in the rate" remain as proposed. The final percentages are listed below.

"High rate" is defined as a minimum of 20 percent of graduates in academic year 1991-92 or academic year 1992-93, whichever is greater, who spend at least 50 percent of their worktime in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1991-92 and 1992-93, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Additional Information

If additional programmatic information is needed, please contact: Dr. Norman Clark, Program Officer, Associated Health Professions Branch, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C-02, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6763.

The *Catalog of Federal Domestic Assistance* number for this program is 93.191. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: May 3, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94-11065 Filed 5-6-94; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1994.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: June 1, 1994; 9 a.m.-5 p.m. June 2, 1994; 9:00 a.m.-3:00 p.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Commission:

- (1) Advises the Secretary on the implementation of the Program,
- (2) On its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table,
- (3) Advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions,
- (4) Surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and

(5) Recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: The full Commission will meet commencing at 9 a.m. on Wednesday, June 1 until 5 p.m., and from 9 a.m. to 3 p.m. on Thursday, June 2. Agenda items will include, but not be limited to, a report on the March 15 meeting of the Ad-hoc Subcommittee of the National Vaccine Advisory Committee on the Institute of Medicine's review of "Pertussis Immunization and Serious Acute Neurologic Illnesses in Children" (The Miller Study), a report on the FDA's assessment of different vaccine lots, a report by the Department of Justice on the efforts to streamline the damages process, a report on the task force on safer vaccines, an update on the vaccine information materials, a report on the National Vaccine Plan, routine Program reports; reports from the National Vaccine Program, and reports from the ACCV Subcommittees. In addition, on June 1, following the meeting of the full Commission, there will be simultaneous meetings of two of the Commission's Working Subcommittees:

Name: Financial Review Subcommittee of the Advisory Commission on Childhood Vaccines.

Time: June 1, 1994, 4 p.m.-5 p.m.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: This Subcommittee reviews quarterly, with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund.

If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full Commission and, if accepted, can be forwarded to the Secretary.

Agenda: The Subcommittee will meet and discuss the trust fund balance for the post-1988 claims and the status of spending on the pre-1988 claims.

Name: Scientific Review Subcommittee of the Advisory Commission on Childhood Vaccines.

Time: June 1, 1994, 4 p.m.-5 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: This Subcommittee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Court of Federal Claims, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Subcommittee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Subcommittee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Subcommittee will also be the first line of study for all outside studies and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: The Subcommittee will meet and discuss recent update on the VAERS project.

Additionally, on June 2, following the meeting of the full Commission, there will be a meeting of one of the Commission's Working Subcommittees:

Name: Subcommittee on Process of the Advisory Commission on Childhood Vaccines.

Time: June 2, 1 p.m.-3 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: This Subcommittee is responsible for seeking, receiving, and analyzing systematic feedback (from interested parents' groups, petitioner's attorneys, etc.) on the implementation of the Vaccine Injury Compensation Program (VICP) and for making recommendations to the full Commission for appropriate changes in the system in order to improve the processes and procedures used by the various parties involved in the VICP.

Agenda: To be determined.

Public comment will be permitted at the respective Subcommittee meetings before

they adjourn in the evening; before noon and at the end of the full Commission meeting on June 1; and before noon and before they adjourn on the second day on June 2. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Bryan Johnson, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, room 8A-35, 5600 Fishers Lane, Rockville, MD 20852; Telephone (301) 443-1533.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Rooms G & H before 10 a.m. on June 1 and 2. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Mr. Bryan Johnson, Division of Vaccine Injury Compensation, Bureau of Health Professions, room 8A-35, 5600 Fishers Lane, Rockville, Maryland 20852; Telephone (301) 443-1533.

Agenda items are subject to change as priorities dictate.

Dated: May 3, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94-11066 Filed 5-6-94; 8:45 am]

BILLING CODE 4160-15-P

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on June 17, 1994, in the Crystal Ballroom of the Hyatt Hotel, 1 Bethesda Metro Center, Bethesda, Maryland 20814.

The entire meeting will be open to the public from 8 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, identify critical gaps/obstacles to progress, and provide concept clearance for proposed research initiatives. Attendance by the public will be limited to space available.

Ms. Anne P. Claysmith, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, room 2A22, telephone (301) 496-0545, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Claysmith in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-11025 Filed 5-6-94; 8:45 am]

BILLING CODE 4140-1-M

National Cancer Institute; Meeting of the Frederick Cancer Research and Development Center Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Frederick Cancer Research and Development Center Advisory Committee, June 13-14, 1994, Building 549, Executive Board Room, NCI Frederick Cancer Research and Development Center, Frederick, Maryland.

This meeting will be open to the public on June 13 from 8:30 a.m. to approximately 10:30 a.m. to discuss administrative matters such as future meetings, budget, and informational items related to the operation of the NCI Frederick Cancer Research and Development Center. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 13 from approximately 10:30 a.m. to recess and on June 14 from 8:30 a.m. to adjournment for discussion of the previous site visit recommendations for the Chemistry of Carcinogenesis Laboratory under contract with Advanced BioScience Laboratories-

Basic Research Program (ABL-BRP) and site visit review of the ABL-BRP Mammalian Genetics Laboratory.

These discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the Contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630E, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892-9906, Tel. (301) 496-5708, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research and Development Center Advisory Committee, National Cancer Institute Frederick Cancer Research and Development Center, P.O. Box B, Frederick, Maryland 21702-1201, Tel. (301) 846-1108, will furnish substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Cedric Long, Tel. (301) 846-1108 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-1102 Filed 5-6-94; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, June 27-28, 1994, at the Executive Plaza North Building, Conference room G, 6130 Executive Boulevard, Rockville, Maryland 20852.

This meeting will be open to the public from 9 a.m. to 10 a.m. on June 27 to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 27 from 10 a.m. to recess and on June 28 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630E, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892-9903, Tel. (301) 496-5708, will provide a summary of the meeting and roster of the committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Contracts Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 601C, 9000 Rockville Pike, Bethesda, Maryland 20892-9903, Tel. (301) 496-7030, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Alma O. Carter on (301) 496-7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93-394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-11022 Filed 5-6-94; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health National Cancer Institute; Meetings of the National Cancer Advisory Board and its Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on May 31 and June 1, 1994. The full Board will meet in Conference Room 10, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda,

Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496-5708), will provide a summary of the meeting and roster of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496-5708 in advance of the meeting.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Dr. Marvin R. Kalt, Executive Plaza North, room 600A Bethesda, MD 20892; (301) 496-5147.

Dates of Meeting: May 31-June 1, 1994.

Place of Meeting: Building 31C, Conference Room 10.

Open: May 31-8 a.m. to approximately 12 noon.

Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Scientific Presentations.

Closed: May 31-3 p.m. to recess.

Agenda: For review and discussion of individual grant applications.

Open: June 1-8 a.m. to adjournment.

Agenda: Policy and Scientific Presentations, subcommittee Reports; and New Business.

Name of Committee: Subcommittee on Planning and Budget.

Executive Secretary: Ms. Cherie Nichols, Building 31, room 11A19 Bethesda, MD 20892; (301) 496-5515.

Date of Meeting: May 31, 1994.

Place of Meeting: Building 31C, Conference Room 8.

Open: 2 p.m. to 3 p.m.

Agenda: To discuss the NCI budget and various planning issues.

Name of Committee: Clinical Investigations Task Force.

Executive Secretary: Dr. Bruce Chabner, Building 31, room 3A52 Bethesda, MD 20892; (301) 496-4291.

Date of Meeting: May 31, 1994.

Place of Meeting: Building 31C, Conference Room 8.

Open: Immediately following the recess of the NCAB's closed session.

Agenda: To discuss clinical investigational issues.

Name of Committee: Subcommittee for Special Priorities.

Executive Secretary: Ms. Iris Schneider, Building 31, room 11A48 Bethesda, MD 20892; (301) 496-5534.

Date of Meeting: May 31, 1994

Place of Meeting: Building 31C, Conference Room 9.

Open: 2 p.m. to 3 p.m.

Agenda: To discuss issues related to special priorities.

Name of Committee: Subcommittee on Information and Cancer Control.

Executive Secretary: Mr. Paul Van Nevel, Building 31, room 10A31, Bethesda, MD 20892; (301) 496-6631.

Date of Meeting: May 31, 1994.

Place of Meeting: Building 31C, Conference Room 9.

Open: 1 p.m. to 2 p.m.

Agenda: To discuss cancer control issues.

Name of Committee: Subcommittee on Cancer Centers.

Executive Secretary: Dr. Brian Kimes, Executive Plaza North, room 300 Bethesda, MD 20892; (301) 496-8537.

Date of Meeting: May 31, 1994.

Place of Meeting: Building 31C, Conference 8.

Open: 1 p.m. to 2 p.m.

Agenda: To discuss the cancer centers.

Name of Committee: Subcommittee on Environmental Carcinogenesis.

Executive Secretary: Dr. Richard Adamson, Building 31, room 11A03, Bethesda, MD 20892; (301) 496-6618.

Date of Meeting: May 31, 1994.

Place of Meeting: Building 31C, Conference 9.

Open: Immediately following the recess of the NCAB's closed session.

Agenda: To discuss environmental carcinogenesis.

Catalog of Federal Domestic Assistance Program Numbers: (93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-11023 Filed 5-6-94; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting: National Digestive Diseases Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on June 6, 1994 from 8:30 a.m. until 4 p.m. The focus of the morning portion of the meeting will be devoted to discussion of recommendations from "The Role of Transjugular Intrahepatic Portal-Systemic Shunt" (TIPS) conference. The Board will also hear follow up reports on other issues including the impact of Health Care Reform, the Clinical Trials Program, and patient and professional educational activities. This meeting will be open to the public and will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Ms. Tommie S. Tralka, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, two weeks prior to the meeting. In addition, her office will provide a membership roster of the Board and an agenda and summaries of the actual meetings.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-11026 Filed 5-6-94; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Health

National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, June 3, 1994. The meeting will be held at the National Institutes of Health, Federal Building, Conference Room B-19, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Clarice D. Reid, Executive Secretary, Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-11027 Filed 5-6-94; 8:45 am]

BILLING CODE 4140-01-M

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Meeting

Notice is hereby given of a change in the agenda of the meeting of the National Advisory Neurological Disorders and Stroke Council (NINDS) on May 26-27, 1994, published in the Federal Register on April 15, 1994 (59 FR 18141).

The scientific presentation by an NINDS intramural scientist and the

Director of the NIH Office of Alternative Medicine will not be reported. The agenda will include a report by the Acting Director, Division of Extramural Activities, NINDS, and a presentation by an NINDS grantee.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: May 3, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-11024 Filed 5-6-94; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

[GN # 2241]

National Vaccine Advisory Committee (NVAC), Subcommittee on Future Vaccines; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing for the forthcoming meeting of the Future Vaccines Subcommittee of the National Vaccine Advisory Committee.

DATES: Date, Time and Place: June 3, 1994, at 9 a.m. to 5 p.m., Maryland Conference Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Chester A. Robinson, D.P.A., Acting Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, HHH Building, room 730E, 200 Independence Avenue, SW., Washington, DC 20201, (202) 401-8141.

AGENDA: OPEN PUBLIC HEARING:

Interested persons may formally present data, information, or views orally or in writing on issues to be discussed by the Subcommittee. Because of limited seating, those desiring to make such presentations should make a request to the contact person before May 27, and submit a brief description of the information they wish to present to the Subcommittee. Requests should include the names and addresses of proposed participants. A maximum of 10 minutes will be allowed for a given presentation, but the time may be adjusted depending on the number of persons presenting. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be

allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the Chairperson's discretion.

OPEN SUBCOMMITTEE DISCUSSION: The Subcommittee is charged with developing guidance that will lead to the development, licensure, and best use of existing and new vaccines in the simplest possible immunization schedules. The discussions will include the desirable scope, focus, organization, outcome, presentation, and timing of its deliberations.

A list of Subcommittee members and the charter of the NVAC Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: April 26, 1994.

Chester A. Robinson,

Acting Executive Secretary, NVAC.

[FR Doc. 94-11099 Filed 5-6-94; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[GN# 2240]

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970 and 56 FR 29484, June 27, 1991, as amended most recently in pertinent parts at 51 FR 39424, October 28, 1986) is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

FDA proposes to revise the substructure of the Office of Legislative Affairs within the Office of External Affairs. The purpose of the revisions to the substructure is to organize around program areas rather than the current oversight and legislative functional areas to increase the efficiency of FDA's legislative and oversight support on issues that pertain to specific programs including biologics, drugs, and devices; and provide the appropriate specialization that is required to more effectively perform these functions.

Under section HF-B, Organization:

1. Delete subparagraphs (d-1) Oversight and Investigations Staff (HFADA) and (d-2) Legislation and Special Projects Staff (HFADB) in their entirety and insert the new subparagraphs (d-1) Congressional Affairs Staff I (HFADA), (d-2) Congressional Affairs Staff II (HFADC), and (d-3) Special Projects Staff

(HFADD) under paragraph Office of Legislative Affairs (HFAD) under Office of External Affairs (HFAQ) reading as follows:

Congressional Affairs Staff I (HFADA). Serves as the Agency focal point with Congress, the Department, PHS, and other agencies on all congressional and legislative issues and activities as they pertain to the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, the National Center for Toxicological Research, and cross-cutting Agency organizational components and issues.

Coordinates and prepares Agency responses to congressional and legislative inquiries and other sensitive correspondence on various issues that affect the Agency including proposed legislation, oversight, investigative, and constituent matters.

Initiates, coordinates, and provides in-depth analyses of Agency legislative needs and proposed and pending legislation by preparing supporting documents, legislative proposals, and position papers for the Commissioner, Deputy Commissioners, other Agency officials, Congress, and OMB.

Develops and coordinates testimony for the Agency and the Department for presentation to congressional committees; monitors hearings; and edits transcripts of Agency testimony.

Provides information on the Agency's legislative programs and proposals to consumers and regulated industry.

In collaboration with other FDA and Department offices, initiates and conducts appraisals of regulatory and scientific policies to resolve problems pertaining to FDA programs and policies under existing statutes.

Congressional Affairs Staff II (HFADC). Serves as the Agency focal point with Congress, the Department, PHS, and other agencies on all congressional and legislative issues and activities as they pertain to the Center for Biologics Evaluation and Research, the Center for Drug Evaluation and Research, and the Center for Devices and Radiological Health.

Coordinates and prepares Agency responses to congressional and legislative inquiries and other sensitive correspondence on various issues that affect the Agency including proposed legislation, oversight, investigative, and constituent matters.

Initiates, coordinates, and provides in-depth analyses of Agency legislative needs and proposed and pending legislation by preparing supporting documents, legislative proposals, and position papers for the Commissioner, Deputy Commissioners, other Agency officials, Congress, and OMB.

Develops and coordinates testimony for the Agency and the Department for presentation to congressional committees; monitors hearings; and edits transcripts of Agency testimony.

Provides information on the Agency's legislative programs and proposals to consumers and regulated industry.

In collaboration with other FDA and Department offices, initiates and conducts appraisals of regulatory and scientific policies to resolve problems pertaining to FDA programs and policies under existing statutes.

Special Projects Staff (HFADD). Coordinates studies and investigations of Agency components that are conducted by outside organizations including the Office of Technology Assessment (OTA), Congressional Research Service (CRS), and the General Accounting Office (GAO).

Monitors all GAO/OTA activities regarding FDA.

Under Section HF-D, Delegation of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to officers or employees of the Office of Legislative Affairs in effect prior to this date shall continue in effect in them or their successors.

Dated: April 12, 1994.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 94-11098 Filed 5-6-94; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-4210-04-P; MTM 80345]

Order Providing for Opening of Public Land in Yellowstone County; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open land reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, (406) 255-2829.

SUPPLEMENTARY INFORMATION:

1. The following described lands have been reconveyed by exchange to the

United States pursuant to Section 206 of the Act of October 21, 1976, 43 U.S.C. 1716 from the State of Montana:

Principal Meridian, Montana

T. 1 S., R. 26 E.

Sec. 23, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$.
Comprising 160.00 acres in Yellowstone County.

2. At 9 a.m. on July 15, 1994, the reconveyed lands described above will be opened to the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 15, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

3. At 9 a.m. on July 15, 1994, the reconveyed lands described above will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: April 25, 1994.

James Binando,

Acting Deputy State Director, Division of Lands and Renewable Resources.

Distribution

Original and 2 copies to Federal Register.

SO Bulletin Board.

Phyllis Belcher, (MT-950), 4210-04, \$125.00.

DM, Miles City.

AM, Billings Resource Area.

Honorable Marc Racicot, Governor of Montana, Helena, Montana 59601.

Montana Department of Fish, Wildlife and Parks,

Attn: James A. Posewitz, 1420 East Sixth Avenue, Helena, Montana 59620.

Yellowstone County Commissioners,
Yellowstone County Courthouse,
Billings, Montana 59101.

[FR Doc. 94-11074 Filed 5-6-94; 8:45 am]

BILLING CODE 4310-DN-P

Fish and Wildlife Service

Availability of a Draft Recovery Plan for *Platanthera praeclara* (Western Prairie Fringed Orchid) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a technical/agency draft recovery plan for the threatened *Platanthera praeclara* (western prairie fringed orchid). This terrestrial orchid is currently known to occur in 74 populations in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, and the Canadian province of Manitoba on Federal, state, county, township, and private land. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 8, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, 55111-4056 (telephone: 612/725-3276). Written comments and materials regarding the plan should be addressed to Zella E. Ellshoff, Regional Botanist, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Zella E. Ellshoff at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the

United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Platanthera praeclara (western prairie fringed orchid) is currently known to occur in the western Central Lowlands and eastern Great Plains of the United States (in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and Oklahoma) and the Interior Plains of south-central Canada (in Manitoba). Habitat includes fire- and grazing-adapted communities including unplowed, calcareous prairies and sedge meadows, old fields, and roadside ditches. The major threat to the species is the destruction of habitat for cropland. Habitat alteration due to land use practices (burning, grazing, and mowing) and hydrologic change (filling of wetlands) also adversely affects the species. Recovery efforts will concentrate on protecting and maintaining self-sustaining populations in habitat known to support extant populations in applicable physiographic regions of each state within the species' historical range. These actions include, but are not limited to: Identifying and searching potential habitat, maintaining habitat of known populations as native prairie, conducting appropriate research and monitoring, developing and implementing habitat management plans that sustain and enhance populations of the species, disseminating information about the species to a variety of audiences, and providing the highest level of legal protection appropriate for all populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified

will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1433(f).

Dated: May 3, 1994.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 94-11082 Filed 5-6-94; 8:45 am]

BILLING CODE 4310-65-M

Availability of Final Environmental Impact Statement

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a final Environmental Impact Statement for the proposed reintroduction of gray wolves to Yellowstone National Park and Central Idaho.

FOR FURTHER INFORMATION CONTACT:

Ed Bangs, Project leader Gray Wolf EIS, Box 8017, Helena, Montana 59601 (406) 449-5202.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the above address. Copies of the final EIS have been distributed to public libraries throughout Wyoming, Montana, and Idaho, to federal, state, local, and tribal agencies, and organizations that commented on the draft EIS, and to individuals requesting copies. Copies of the EIS and copies of public comment on the draft EIS are also available for inspection at the U.S. Department of the Interior, Fish and Wildlife Service, Endangered Species/Ecological Service Offices in Helena, Montana, Boise, Idaho, and Cheyenne, Wyoming. Any comments on the proposal must be received no later than 30 days after the date of publication of the notice of availability of the EIS on the reintroduction of gray wolves to Yellowstone National Park and Central Idaho, by EPA in the *Federal Register*. No action will be taken on this proposal before 30 days following publication of the notice of availability of the EIS by EPA.

Dated: May 4, 1994.

Jonathan P. Deason,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 94-11132 Filed 5-6-94; 8:45 am]

BILLING CODE 4310-65-M

Minerals Management Service

[DES 94-22]

Gulf of Mexico Region; Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings for Proposed Central and Western Gulf of Mexico Sales 152 and 155, et al.

The Minerals Management Service has prepared a draft Environmental Impact Statement (EIS) relating to proposed 1995 Outer Continental Shelf (OCS) Oil and Gas Lease Sales 152 and 155 in the Central and Western Gulf of Mexico. The proposed Central Gulf Sale 152 will offer for lease approximately 30.9 million acres and the Western Gulf Sale 155 will offer approximately 27.9 million acres.

Single copies of the draft EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS-5034), 1201 Elmwood Park Boulevard, room 114, New Orleans, Louisiana 70123-2394.

Copies of the draft EIS will also be available for review by the public in the following libraries:

Texas

Austin Public Library, 402 West Ninth Street, Austin
Houston Public Library, 500 McKinney Street, Houston
Dallas Public Library, 1513 Young Street, Dallas
Brazoria County Library, 410 Brazoport Boulevard, Freeport
LaRatama Library, 505 Mesquite Street, Corpus Christi
Texas Southmost College Library, 1825 May Street, Brownsville
Rosenberg Library, 2310 Sealy Street, Galveston
Texas State Library, 1200 Brazos Street, Austin
Texas A&M University, Evans Library, Spence and Lubbock Streets, College Station
University of Texas, Lyndon B. Johnson School of Public Affairs Library, 2313 Red River Street, Austin
The University of Texas at Dallas Library, 2601 North Floyd Road, Richardson
Lamar University, Gray Library, Virginia Avenue, Beaumont
East Texas State University Library, 2600 Neal Street, Commerce
Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches
University of Texas, 21st and Speedway Streets, Austin
University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin

Baylor University Library, 13125 Third Street, Waco
University of Texas at Arlington, 701 South Cooper Street, Arlington
University of Houston-University Park Library, 4800 Calhoun Boulevard, Houston
University of Texas at El Paso, Wiggins Road and University Avenue, El Paso
Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene
Texas Tech University Library, 18th and Boston Streets, Lubbock
University of Texas at San Antonio, John Peace Boulevard, San Antonio.
Corpus Christi Central Library, 805 Comanche Street, Corpus Christi

Louisiana

Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans
Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston
New Orleans Public Library, 219 Loyola Avenue, New Orleans
University of New Orleans Library, Lakeshore Drive, New Orleans
Louisiana State University Library, 760 Riverside Road, Baton Rouge
Lafayette Public Library, 301 W. Congress Street, Lafayette
Calcasieu Parish Library, 411 Pujot Street, Lake Charles
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux
University of Southwestern Louisiana, Dupre Library, 302 East St. Mary Boulevard, Lafayette
LUMCOM, Library, Star Route 541, Chauvin

Mississippi

Harrison County Library, 14th and 21st Avenues, Gulfport
Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs
Jackson George Regional Library System, 3214 Pascagoula Street, Pascagoula

Alabama

Auburn University at Montgomery, Library, Taylor Road, Montgomery
University of Alabama Libraries, 809 University Boulevard East, Tuscaloosa
Mobile Public Library, 701 Government Street, Mobile
Montgomery Public Library, 445 South Lawrence Street, Montgomery
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores
Dauphin Island Sea Lab, Marine Environmental Science Consortium

Library, Bienville Boulevard, Dauphin Island
University of South Alabama,
University Boulevard, Mobile

Florida

University of Florida Libraries,
University Avenue, Gainesville
Florida A&M University, Coleman
Memorial Library, Martin Luther King
Boulevard, Tallahassee
Florida State University, Strozier
Library, Call Street and Copeland
Avenue, Tallahassee
Florida Atlantic University, Library,
20th Street, Boca Raton
University of Miami Library, 4600
Rickenbacker Causeway, Miami
University of Florida, Holland Law
Center Library, Southwest 25th Street
and 2nd Avenue, Gainesville
St. Petersburg Public Library, 3745
Ninth Avenue North, St. Petersburg
West Florida Regional Library, 200
West Gregory Street, Pensacola
Florida Northwest Regional Library
System, 25 West Government Street,
Panama City
Leon County Public Library, 127 North
Monroe Street, Tallahassee
Lee County Library, 3355 Fowler Street,
Fort Myers
Charlotte-Glades Regional Library
System, 2280 NW Aaron Street, Port
Charlotte
Tampa-Hillsborough County Public
Library System, 800 North Ashley
Street, Tampa
Key Largo Public Library, 99551 No. 3
Overseas Highway, Key Largo
Selby Public Library, 1001 Boulevard of
the Arts, Sarasota
Collier County Public Library, 650
Central Avenue, Naples
Marathon Public Library, 3152 Overseas
Highway, Marathon
Monroe County Public Library, 700
Fleming Street, Key West.
Environmental Library, Sarasota
County, 7112 Curtiss Avenue,
Sarasota

In accordance with 30 CFR 256.26,
the Minerals Management Service will
hold public hearings to receive
comments and suggestions relating to

the draft EIS for Sales 152 and 155 from
individuals, public and private groups,
and Government agencies. The hearings
will provide the Secretary of the Interior
with information from interested parties
which will help in the evaluation of the
potential effects of proposed lease Sales
152 and 155.

In addition, the hearings will serve as
an early opportunity for helping to
determine the scope of significant issues
related to the development of a draft EIS
for the next proposed lease sales in the
Gulf of Mexico Region, Sales 157 and
161. The hearings will provide
information for the development of
appropriate alternatives and mitigating
measures, as well as to identify
significant issues, to be considered in
the draft EIS.

The hearings will be held on the
following dates and times at the
locations indicated:

June 13, 1994

Marriott International Airport Hotel,
18700 John F. Kennedy Boulevard,
Houston, Texas, 7 p.m. to 9 p.m.

June 14, 1994

Austin Marriott at the Capitol, 701 East
11th Street, Austin Texas, 3 p.m. to 5
p.m. and, 7 p.m. to 9 p.m.

June 15, 1994

Mineral Management Service,
Conference Room 111, 1201 Elmwood
Park Boulevard, New Orleans,
Louisiana, 1 p.m. to 3 p.m.

June 16, 1994

Ramada Airport Resort and Conference
Center, 600 S. Beltline Highway,
Mobile, Alabama, 7 p.m. to 9 p.m.

Interested individuals, representatives
of organizations, and public officials
wishing to testify at the hearings may
register the day of the hearing at the
hearing sites beginning 1 hour prior to
the hearing. Oral testimony should be
limited to 10 minutes. Each hearing will
begin at the specified time and will
recess when all speakers have had an
opportunity to testify. If there are no
additional speakers, the hearing will
adjourn immediately after the recess. An

oral statement may be supplemented by
a written statement which may be
submitted to the presiding hearing
official at the time of the oral
presentation or by mail until July 28,
1994. This will allow those unable to
testify at a public hearing an
opportunity to make their views known
and for those presenting oral testimony
to submit supplemental information and
comments.

Comments concerning the draft EIS
will be accepted until July 28, 1994, and
should be addressed to the Regional
Director, Minerals Management Service,
Gulf of Mexico Region, 1201 Elmwood
Park Boulevard, New Orleans, Louisiana
70123-2394. Scoping comments on
proposed Gulf of Mexico Sales 157 and
161 should be submitted by June 13,
1994, to the same address.

Dated: April 22, 1994.

Thomas Gernhofer,

Associate Director for Offshore Minerals
Management.

[FR Doc. 94-11071 Filed 5-6-94; 8:45 am]

BILLING CODE 4310-MR-P

Environmental Document Prepared for Offshore Storage and Treatment Vessel (OS&T) Abandonment Project on the Pacific Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service
(MMS), Interior.

ACTION: Notice of the availability of
environmental document prepared for
the Santa Ynez Unit OS&T
Abandonment Project on the Pacific
OCS.

SUMMARY: The MMS, in accordance with
Federal Regulations (40 CFR 1501.4 and
1506.6) that implement the National
Environmental Policy Act (NEPA),
announces the availability of a NEPA-
related Environmental Assessment (EA)
and Finding of No Significant Impact
(FONSI), prepared by the MMS for the
following Santa Ynez Unit Development
and Production Plan Modifications.

PARTIES: Exxon Company, U.S.A.

Activity	Location	Date
Abandonment and removal of offshore storage and treatment vessel (OS&T) and associated single-leg anchor mooring (SALM).	Santa Barbara Channel, Santa Ynez Unit, Lease OCS-P 0188.	5/94 through 9/94.

Persons interested in reviewing the
environmental document for the
proposal listed above or obtaining
information about EA's and FONSI's
prepared for activities on the Pacific

OCS are encouraged to contact the MMS
office in the Pacific OCS Region.

FOR FURTHER INFORMATION CONTACT:

Regional Supervisor, Office of
Environmental Evaluation, Pacific OCS
Region, Minerals Management Service,

770 Paseo Camarillo, Mail Stop 7300,
Camarillo, California 93010, telephone
(805) 389-7801.

SUPPLEMENTARY INFORMATION: The MMS
prepares EA's and FONSI's for
proposals that relate to research and

development of mineral resources on the Pacific OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: April 20, 1994.

Peter L. Tweedt,

Acting Regional Director, Pacific OCS Region.

[FR Doc. 94-10969 Filed 5-6-94; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32173 et al.]

Orange County Transportation Authority/Riverside County Transportation Commission/San Bernardino Associated Governments/San Diego Metropolitan Transit Development Board/North San Diego County Transit Development Board; Acquisition Exemption; The Atchison, Topeka and Santa Fe Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: By a separate decision in this docket, served April 7, 1994, the Commission, on its own motion, is: (a) exempting the acquisition by the San Bernardino Associated Governments (SANBAG) and the Orange County Transportation Authority (OCTA) of railroad property owned by Southern Pacific Transportation Company; and (b) granting these agencies exemptions from the Interstate Commerce Act concerning their operation of these properties. These exemptions are subject to the labor protection conditions described in the separate decision. The purpose of the exemptions is to facilitate the provision of rail mass transportation service by these agencies. The separate decision may be obtained as described below.

DATES: This exemption is effective on June 8, 1994. Petitions to stay must be filed by May 19, 1994. Petitions to reopen must be filed by May 30, 1994.

FOR ADDITIONAL INFORMATION CONTACT: Maynard Dixon (202) 927-5293 or Joseph Dettmar (202) 927-5660. [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: As explained in the separate decision in this proceeding, we asserted jurisdiction over the transfer of these properties to another party, Los Angeles County Transportation Commission (LACTC), and exempted their operation in *Southern Pac. Transp. Co.—Aban.—L.A. County, CA*, 8 I.C.C.2d 495 (1992), *Reconsidered and Clarified*, 9 I.C.C.2d 385 (1993) (*Southern Pacific*). Without our knowledge, however, the transfers to LACTC were never consummated. Instead SANBAG and OCTA assumed LACTC's contractual rights to acquire and operate the properties. Exemptions for these agencies' acquisitions of the properties (in the place of LACTC) is justified for the same reasons given in *Southern Pacific*. Because an adequate record and explanation to support our exemptions were developed in *Southern Pacific*, we are not seeking additional comments here. As noted in the April 7, 1994 decision, these exemptions will be effective 30 days from the publication of this notice. SANBAG and OCTA had until May 7, 1994, to inform this Commission as to whether they wish to proceed with the exemptions.

For a copy of our separate decision in this proceeding, write, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721].

Decided: April 8, 1994.

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

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-11131 Filed 5-6-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Nashua Corporation, et al*, Civil Action No. 88-287, was lodged on April 13, 1994 with the United States

District Court for the District of Delaware. This proposed consent decree would resolve this cost recovery action under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, for the New Castle Abandoned Container Site, a warehouse facility in New Castle, Delaware, for a payment of \$300,000 toward reimbursement of expenditures from the Superfund to conduct removal actions at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Nashua Corporation, et al*, DOJ Ref. # 90-11-3-300.

The proposed consent decree may be examined at the Office of the United States Attorney, Chemical Bank Plaza, suite 1100, 1201 Market Street, Wilmington, DE 19899; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, 202-264-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94-10184 Filed 5-6-94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer can, upon request, advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/reporting requirement.
- The title of the recordkeeping/reporting requirement.
- The OMB and/or Agency identification numbers, if applicable.
- How often the recordkeeping/reporting requirement is needed.
- Whether small businesses or organizations are affected.
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-7316).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Departmental Management Audit Resolution and Appeal Requirements
1225-0017
State or local governments; Businesses or other for-profit; Small businesses or organizations
222 respondents; 6.23 hours per response; 1,383 hours.
This information collection, 29 CFR part 96, is designed to provide a process

for resolving the issues questioned in audits during the resolution process by recipients of Federal assistance and a standard method of appealing the grant or contracting officers final decision.

Extension

Pension and Welfare Benefits Administration
1210-0085
Recordkeeping
Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
1 respondent; 1 hour per response; 1 total hour.

This class exemption permits the purchase and sale of foreign currencies between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to such plan.

Revision

Bureau of Labor Statistics
Consumer Expenditure Diary and Interview Survey
1220-0050
Questionnaires and Cover Letters CE-300, CE-301, CE-302, CE-302 Supp., CE-303 (L1-L6), CE-380, CE-383, CE-375, CE-801, CE-802, CE-803, CE-880, CE-875, CE-305, CE-900
Daily, Diary; Quarterly, Interview.

Requirements	Responses	Average time per respondents	Subtotal—burden hours
Reporting	45,386	1.0148	48,088
Recordkeeping	6,060	3.5	21,210
69,298 total hours.			

The Consumer Expenditure Surveys gather detailed information on expenditures, income and other related subjects to periodically update the Consumer Price Index. The published data provide a continuing measurement of changes in consumer expenditure patterns for economic analysis.

Extension

Departmental Management Salary Offset
1225-0038
Individuals or households

Regulatory requirement	Respondents	Frequency	Average time per response
20 CFR 20.80	150	On occasion	1.25 hours.
20 CFR 20.81	150	On occasion	1.25 hours.
375 total hours.			

Information is collected from debtors to assist in developing whether an individual is actually indebted to the Department of Labor, and if so, indebted, to evaluate the individual's ability to repay the debt.

Reinstatement

Occupational Safety and Health Administration
Student Data Form
1218-0172; OSHA 182

Individual or households; State or local governments; Businesses or other for-profit; Small businesses or organizations 10,000 responses; 5 minutes per response; 830 total hours; 1 form.

The OSHA 182 will be used to collect information from OSHA Training Institute students on employer groups and emergency contact information. The information will be used in the event of an emergency situation arising; employer group data will be entered into the office computer for historical reporting purposes and could also be used as a check system for tuition collection purposes.

Signed at Washington, DC this 28th day of April, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94-11124 Filed 5-6-94; 8:45 am]

BILLING CODE 4510-23-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94-027]

NASA Advisory Council; Task Force on Shuttle-Mir Rendezvous and Docking Missions; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Task Force on Shuttle-Mir Rendezvous and Docking Missions.

DATES: May 24, 1994, 9 a.m. to 3 p.m.; and May 25, 1994, 9 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1, room 945, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT:

Mr. William L. Vantine, Code M, National Aeronautics and Space Administration, Washington, DC 20546, 202-358-1698.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the upcoming Shuttle-Mir missions from the following perspectives: training, operations, rendezvous and docking.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 3, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94-11059 Filed 5-6-94; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ENDOWMENT ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that a meeting of the National Council on the Arts will be held on May 13-14, 1994 from 9 a.m. to 6 p.m. on May 13, 1994 and from 9 a.m. to 3:30 p.m. on May 14, 1994, in room M-09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on May 13, 1994, from 9 a.m. to 6 p.m. and from 9 a.m. to 1:30 p.m. on May 14, 1994. Topics for discussion will include opening remarks; remarks by the Honorable Wilbur Smith, Mayor of Fort Myers, FL and member of the Conference of Mayors Arts Committee; an update on the President's Committee on the Arts and the Humanities; a Legislative Update; an update on Goals 2000 and related Education Legislation; a preliminary discussion of the FY 96 Budget; an Update on the Assessing Impact of Arts and Humanities on the National Information Infrastructure; and a Program and/or Guidelines and/or Application Review for the Arts in Education, State and Regional Arts Agencies, Local Arts Agencies, Presenting and Commissioning, International, and Literature Programs.

The remaining portion of this meeting on May 14, 1994 from 1:30 p.m. to 3:30 p.m., is for the purpose of reviewing nominations for the National Medal of Arts. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsections (c)(6) and (9)(B) of section 552b of Title 5, United States Code.

Also, in the course of application review, if it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the

Sunshine Act, 5 U.S.C. 552b.

Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Karen Young, at 202/682-5570, Office of Public Affairs, National Endowment for the Arts 20506.

Dated: May 2, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-11019 Filed 5-6-94; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that meeting of the Literature Advisory Panel (Translator Fellowships Section) to the National Council on the Arts will be held on June 14-15, 1994. The panel will meet from 9 a.m. to 5:30 p.m. on June 14, 1994 and from 9 a.m. to 5 p.m. on June 15, 1994. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2:30 p.m. to 5 p.m. on June 15, 1994 for a guideline review, a policy discussion, and updates, review and discussion regarding the Literature Field Overview Study.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on June 14, 1994 and from 9 a.m. to 2:30 p.m. on June 15, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: April 26, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94-11020 Filed 5-6-94; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene its next regular meeting of the Advisory Committee on Medical Uses of Isotopes (ACMUI) on May 19 and 20, 1994. The Meeting was noticed in the Federal Register on April 26, 1994. In accordance with Subsection 10(d), of the Federal Advisory Committee Act, Public Law 92-463AA, a portion of this meeting may be closed to protect the privacy of a physician whose training

and experience will be reviewed by the ACMUI in connection with the physician's application to be an authorized user under a license authorizing medical use of byproduct material.

The description of the discussion of inadvertent administration to the wrong patient in the Federal Register Notice of April 26, 1994, is clarified to provide notice that this discussion will include patient notification following misadministration.

During the discussion of Efficacy of Quality Assurance Requirements for Brachytherapy, the staff will invite comments on the significance of fractionation of high-dose-rate brachytherapy.

DATES: The closed portion of the meeting will begin at 4:30 p.m., May 19, 1994.

ADDRESSES: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6-H-3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-503-3417.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Act (5 U.S.C. App); and the Commission's regulations in Title 10, Code of Federal Regulations, Part 7.

Dated: May 3, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94-11122 Filed 5-6-94; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 64th meeting on Tuesday and Wednesday, May 17 and 18, 1994, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows:

Tuesday, May 17, 1994—8:30 a.m. until 6 p.m.

Wednesday, May 18, 1994—8:30 a.m. until 6 p.m.

During this meeting the Committee plans to consider the following:

A. *Tectonics of the Proposed Yucca Mountain Site*—Discuss research and technical assistance being performed by the NRC staff and the Center for Nuclear Waste Regulatory Analyses related to the tectonics of the Yucca Mountain site.

B. *National Academy of Science's Panel on the Technical Bases for Yucca Mountain Standard*—Hear a report from a member of ACNW who attended an April 28-29, 1994 meeting of the Academy's Panel to update the Committee on current progress.

C. *Preparation of ACNW Reports*—Prepare ACNW reports on issues considered during this and previous meetings.

D. *Future Activities*—Discuss topics proposed for consideration by the full Committee on working groups.

E. *New Members*—Discuss matters related to the appointment of new members, and organizational and personnel matters related to the ACNW members and ACNW staff.

Portions of this session may be closed to public attendance to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

F. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the *Federal Register* on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. The ACRS Office is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the ACRS Office as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive

Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: May 3, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94-11123 Filed 5-6-94; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33993; File No. SR-Amex-93-15]

Self-Regulatory Organizations; Order Granting Partial Permanent Approval to a Proposed Rule Change by the American Stock Exchange, Inc. Relating to the After-Hours Trading Facility

May 2, 1994.

I. Introduction

On April 21, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), 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 request permanent approval of the Exchange's After-Hours Trading ("AHT") facility.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33802 (March 22, 1994), 59 FR 14690 (March 29, 1994). No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Amex requests permanent approval of its After-Hours Trading ("AHT") facility.³ The Commission's order approving the Exchange's AHT facility contained a two-year "sunset" provision.⁴ The Commission several

times extended the "sunset" date for the AHT facility, most recently until April 30, 1994.⁵ During the pilot period, the Amex submitted periodic monitoring reports on its AHT facility.⁶

In August 1991, the Commission partially approved the Exchange's AHT facility on a temporary basis. Under the current Amex AHT facility, members and member organizations ("members"), not including specialists,⁷ enter both proprietary and agency orders in any Exchange-traded equity security (e.g., stocks, rights, warrants, American Depositary Receipts ("ADRs"), and equity derivative products)⁸ for execution at the Exchange's last closing regular way price.⁹ Specifically, commencing at 4:15 p.m.,¹⁰ single-sided round lot orders can be entered through the PER system¹¹ or left with the specialist or his or her authorized representative for matching and execution at 5 p.m. at the Exchange's last closing regular way price, i.e., the last price at which the equity traded on the Exchange during the normal 9:30 a.m. to 4 p.m. trading session. In addition, coupled buy and sell round lot, odd lot, and partial round lot orders can be entered through PER or left with the specialist or his or her representative for execution at 5 p.m.

Exchange's AHT facility. See Securities Exchange Act Release No. 32363 (May 25, 1993), 58 FR 31558 (June 3, 1993) and 33561 (February 1, 1994), 59 FR 5789 (February 8, 1994) (order granting partial accelerated approval to File No. SR-Amex-93-15).

⁵ See Release Nos. 33561 and 32363, *supra* note 4.

⁶ See letters from William Floyd-Jones, Jr., Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Louis A. Randazzo, Attorney, Derivative and Exchange Oversight, SEC, dated March 14, 1994; to Diana Luka-Hopson, Branch Chief, SEC, dated September 30, 1993; and to Diana Luka-Hopson, Branch Chief, SEC, dated May 21, 1993.

⁷ The Commission is not approving the portion of the proposed rule change which allows specialists to participate in the AHT facility by entering proprietary or customer orders.

⁸ The Commission notes that the term "equity derivative products" in the context of this rule filing is limited only to products that may be derivative of another equity security and eligible for routing through the PER system. It does not include standardized options, such as options on individual stocks or on indexes of securities, such as Amex's Major Market Index ("XMI").

⁹ The Amex's proposal changes existing Amex rules and adopts a new "1300 series" of rules that apply solely to the after-hours facility (Rules for After-Hours Trading Facility).

¹⁰ The 15-minute interval between the close of the normal trading session and the commencement of the after-hours facility will allow Exchange systems sufficient time for switch-over to the operations necessary for the after-hours facility.

¹¹ The Amex's Post Execution Reporting Service ("PER") electronically routes market and limit orders in equity securities to the applicable specialist post.

against each other at the Exchange's last regular way price.¹²

Members are also able to designate good 'til cancelled ("GTC")¹³ limit orders entered during the 9:30 a.m. to 4 p.m. trading session as eligible for execution during the after-hours session. Such orders are identified as "GTX," indicating that after the close of the normal trading session, those that are executable at the Exchange's last closing regular way price will migrate to the after-hours facility for possible execution. Only unconditioned round lot and partial round lot limit orders are allowed to be designated as GTX; any market, stop, stop limit, or odd lot orders so designated will be rejected. For purposes of execution during the after-hours session, GTX orders have priority over all other single-sided closing-price orders, and, among themselves, retain the same priority as they had on the specialist's book. Members are permitted to designate GTC orders transmitted both through PER and manually to the specialist during the regular trading session as eligible for after-hours execution.

Eligible orders may be entered and cancelled until 5 p.m. However, the AHT session is not available for any issue that remains halted as of the close of the regular trading session. Similarly, trading in the after-hours session may not take place if a market-wide "circuit breaker" trading halt remains in effect at the close of the regular trading session. In addition, if at any time between 4 and 5 p.m. the Exchange determines, based on news or other events, that the AHT facility should not be available for a particular issue, a notice of such determination will be disseminated through a Common Message Switch ("CMS") broadcast and over the Consolidated Tape System ("CTS") high-speed line and low speed ticker, and all single-sided and coupled closing-price orders in that issue will be considered cancelled. GTX orders which had migrated to the after-hours session will be returned to the specialist's book, where they will remain the same priority among themselves as they had originally.

After commencement of the AHT session, employees of the specialist unit "strip their racks," or remove from their limit order books, all GTX orders executable at the Exchange's last closing regular way price. Single-sided and

¹² A member is not permitted to enter coupled buy and sell orders if both are for accounts in which any member, or an associated person, has a direct or indirect interest.

¹³ A GTC order is an order to buy or sell which remains in effect until it is either executed or cancelled. Amex Rule 131(f).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

³ Concurrently with this order, the Commission is also permanently approving related proposals submitted by the New York Stock Exchange, Inc. ("NYSE"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Philadelphia Stock Exchange, Inc. ("Phlx") and the Pacific Stock Exchange, Inc. ("PSE"), relating to their respective programs which provide for executions of securities after regular trading hours. See File Nos. SR-NYSE-93-50; BSE-93-24; SR-CHX-93-23; SR-Phlx-94-8; and SR-PSE-94-2.

⁴ The Commission partially approved the Exchange's AHT facility in 1991. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991). The Commission subsequently approved extensions of the

coupled closing-price orders transmitted through PER will print out at the specialist post continuously until 5 p.m., during which time members are also able to manually deliver such orders to the post. Specialists or their employees match GTX and single-sided closing-price buy and sell orders on a first-in, first-out ("FIFO") basis and set them aside for execution at 5 p.m.¹⁴ In the event of cancellations, the specialists or their employees will re-match the remaining orders to ensure that they retain their FIFO priority.

At 5 p.m., all matched GTX and single-sided closing-price orders are executed by the specialists, with reports of execution being delivered to the entering members (either through PER or manually, depending on how the order was entered). Any unmatched, and therefore unexecuted, single-sided closing-price order is reported back as such to the entering firm. Any unexecuted portion of a GTX order is returned to the specialist's book, maintaining its priority, and may therefore participate in the next day's normal trading session, unless cancelled beforehand. Coupled closing-price orders, if not cancelled, are also executed at 5 p.m.

After 5 p.m., there are separate prints for each issue that participated in the after-hours session: The first representing the aggregate number of shares of the issue that was traded through single-sided (including GTX) orders, and the second representing the aggregate number of shares traded through coupled orders. The latter will be printed as a "sold" sale to ensure that the price of coupled orders is not selected as the day's consolidated closing price or used as the basis for the next day's Intermarket Trading System ("ITS") pre-opening application.

III. Discussion

After careful consideration, the Commission believes that the portion of the Amex proposal establishing an after-hours session which would enable members, not including specialists, to enter both proprietary and agency orders in any Exchange-traded equity security, including stocks, rights, warrants, ADRs, and non-option equity derivative products, for execution at the Exchange's last closing regular way price, is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, further investor protection and

the public interest in fair and orderly markets on national securities exchanges. For these reasons and for the reasons set forth below and in the approval orders for the Amex pilot,¹⁵ the NYSE pilot,¹⁶ and the NYSE order granting permanent approval of its OHT facility also being approved today,¹⁷ the Commission finds that permanent approval of the Amex's AHT trading session, as originally adopted without specialist participation, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 and 11A of the Act.¹⁸

In its most recent monitoring report, the Amex stated that, in 1993, 57 trades having a volume of 611,300 shares were traded during the Amex AHT session. From September 1993 through February 1994, a total of 51 firms entered orders in the AHT session. Data submitted in the monitoring reports does not indicate that the AHT trading session had any effect on volatility, quote spreads or block trading during the last hour of the regular trade session.

The Amex proposal is substantially similar, and a reasonable competitive response, to the NYSE's Crossing Session I.¹⁹ By allowing members to enter single-sided and coupled orders into an after-hours facility,²⁰ as well as permitting the migration of certain limit orders (GTX orders) from the regular 9:30 a.m. to 4 p.m. trading session for possible execution in the after-hours facility, the Exchange is providing a benefit to investors who wish to participate in an after-hours trading session. The AHT facility also is a mechanism for maintaining the Amex's individual marketplace on a competitive level with the NYSE and the regional exchanges.

The Commission believes that, although Amex specialists will know which limit orders are designated "GTX" and will manually execute matched GTX and one-sided orders, they should not be able to use this information to their own advantage

¹⁵ See AHT Approval Orders, *supra* note 4 for a complete description of the Amex AHT facility and the Commission's rationale for approving the proposal on a pilot basis. The discussions in those orders are incorporated by reference into this order.

¹⁶ See Securities Exchange Act Release No. 29237 (May 24, 1991) (order approving File Nos. SR-NYSE-90-52 and SR-NYSE-90-53).

¹⁷ See Securities Exchange Act Release No. 33992 (May 2, 1994).

¹⁸ 15 U.S.C. 78f and 78k-1 (1988).

¹⁹ For a description of NYSE Crossing Session I, see Release No. 29237, *supra* note 16.

²⁰ But see limitation on member orders described in note 14, *supra*.

because specialists will be prohibited from entering orders into the after-hours facility. The Commission expects that the Amex will monitor carefully the execution of GTX, single-sided and coupled orders to ensure that Amex specialists are not taking unfair advantage of this information.²¹

The Commission believes that the AHT facility provides benefits to the marketplace generally, and is reasonably consistent with the maintenance of fair and orderly markets. The AHT facility retains some features of an auction market system in that it is a limited purpose facility designed to bring buyers and sellers together with the benefits associated with exchange trading and maintains priority rules for migrated limit orders.²² With respect to price discovery, the Commission notes that the Amex closing price has been determined by auction market trading during the regular trading session.²³

The Commission expects that the Amex, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity in the after-hours facility. Specifically, the Commission expects the Amex to monitor closely the trading of equity derivative products in the after-hours facility to ensure that trading in these issues is not subject to any patterns of manipulation or trading abuses or unusual trading activity. Moreover, the Commission expects the Amex to keep the Commission apprised of any technical problems which may arise regarding the operation of the after-hours facility.

IV. Conclusion

Based on the foregoing, the Commission finds that permanent approval of the AHT facility is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act²⁴ that the portion of the proposed rule change (SR-Amex-93-15) establishing an after-hours

²¹ The Amex requested and received an exemption from Rule 10a-1 under the Act to permit, subject to certain conditions, short sales of certain orders during the AHT sessions without complying with the "tick" provisions of the Rule; and interpretive advice under Rule 10b-18 under the Act to permit issuers to purchase their securities in the AHT sessions. See letter from Larry E. Bergmann, Associate Director, Division of Market Regulation, Commission, to Scott I. Noah, Assistant Vice President, Amex, dated August 5, 1991.

²² See *supra* note 14.

²³ The Commission continues to believe that, in the event that multiple, comparable after hours trading systems develop, resolution of intermarket issues would be the equal responsibility of all marketplaces offering those sessions.

²⁴ 15 U.S.C. 78s(b)(2) (1988).

¹⁴ As noted above, GTX orders will have priority over single-sided closing-price orders entered after commencement of the after-hours session.

trading facility in which members, not including specialists, may enter both proprietary and agency orders in Exchange-traded equity securities for execution at the Exchange's last closing regular way price, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-11033 Filed 5-6-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33991; File Nos. SR-CHX-93-23; SR-BSE-93-24; SR-PSE-94-2; SR-Phlx-94-8]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Boston Stock Exchange, Inc.; Pacific Stock Exchange, Inc.; and Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Changes Relating to Pilot Programs Providing Price Protection of Limit Orders Executable After the Close of Regular Trading Hours

I. Introduction

The Chicago Stock Exchange, Inc. ("CHX"), Boston Stock Exchange, Inc. ("BSE"), Pacific Stock Exchange, Inc. ("PSE"), and Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, the "Regional Exchanges") have filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT")¹ and Rule 19b-4 thereunder,² proposed rule changes to request permanent approval of their respective pilot programs relating to price protection of limit orders.³

The proposed rule changes were published for comment in Securities Exchange Act Release Nos. 33798 (March 22, 1994), 59 FR 14693 (March 29, 1994); 33800 (March 22, 1994), 59 FR 14691 (March 29, 1994); 33799 (March 22, 1994), 59 FR 14697 (March 29, 1994); and 33801 (March 22, 1994), 59 FR 14700 (March 29, 1994). No comments were received on the

proposals. This order grants permanent approval to the pilot programs.

II. Description of the Proposal

The Regional Exchanges request permanent approval of their respective pilot programs relating to price protection of limit orders based on after-hours prints in a primary market.⁴ The pilot programs require Exchange specialists to provide primary market protection for those limit orders entered during an Exchange's primary trading session which are designated as executable after the close of the regular Exchange auction market trading session, known as "GTXT" orders ("good until canceled, executable in the afternoon session").⁵

⁴ For a complete description of each Regional Exchange's pilot program, see their respective approval orders, *infra* note 5.

The Commission notes that the PSE, in an earlier proposed rule change (File No. SR-PSE-91-21) proposed to permit the creation and trading of a new type of order, one-sided ("OS") closing price orders for after hours trading. The proposed OS order is a "day limit order" entered for execution after 1 p.m. PT and eligible for execution as determined by the Exchange. The PSE has withdrawn the request for OS orders for after hours trading. See letter to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, from David P. Semak, Vice President, PSE, dated April 20, 1994.

⁵ On June 13, 1991, the Commission approved, on a pilot basis, File Nos. SR-MSE-91-11 (in 1991, the CHX was named the Midwest Stock Exchange or MSE), SR-BSE-91-04, SR-PSE-91-21, and SR-Phlx-91-26, which amended the Exchanges' respective Rules relating to price protection of limit orders. See Securities Exchange Act Release No. 29297, 56 FR 28191 (June 19, 1991) ("MSE Approval Order"); Securities Exchange Act Release No. 29301, 56 FR 28182 (June 19, 1991) ("BSE Approval Order"); Securities Exchange Act Release No. 29305, 56 FR 28208 (June 19, 1991) ("PSE Approval Order"); and Securities Exchange Act Release No. 29300, 56 FR 28212 (June 19, 1991) ("Phlx Approval Order"). Additional approvals were granted in Securities Exchange Act Release Nos. 29543 (August 16, 1991), 56 FR 40929 ("Order approving File No. SR-PSE-91-28") and 29749 (October 4, 1991), 56 FR 50405 ("Order approving File No. SR-Phlx-91-32"). These pilot programs were established in response to the new after hours trading sessions established by the New York Stock Exchange, Inc. ("NYSE") and American Stock Exchange, Inc. ("Amex"). The NYSE Off-Hours trading ("OHT") sessions extend the NYSE's trading hours beyond the 9:30 a.m. to 4:00 p.m. trading session. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (approving File Nos. SR-NYSE-90-52 and NYSE-90-53), and Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991) (approving File No. SR-Amex-91-15). The Regional Exchanges' procedures provide primary market protection for customer GTXT orders (good until cancelled, executable in the afternoon session) in securities listed both on the NYSE and on the Amex. The Commission several times approved extensions of all the pilot programs, most recently until April 30, 1994. See Securities Exchange Act Release No. 32365 (May 25, 1993), 58 FR 31560 (June 3, 1993) (order extending approval of File No. SR-BSE-93-10); Securities Exchange Act Release No. 32363 (May 25, 1993), 58 FR 31558 (June 3, 1993) (order extending approval of File No. SR-

III. Discussion

The Commission finds that permanent approval of the Regional Exchanges' respective pilot programs to provide price protection to limit orders executable after the close of regular trading hours is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposals are reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and, in general, further investor protection and the public interest in fair and orderly markets on national securities exchanges.⁶

In the Commission's release approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through the development of an after-hours trading session.⁷ Although the Regional Exchanges' programs do not establish after-hours sessions identical to that of the NYSE, the Commission believes that they provide a reasonable competitive response. By allowing GTXT orders that would be executed on the NYSE and Amex to receive a similar fill on the Regional Exchanges, the programs provide a mechanism for maintaining each Regional Exchange's individual

Amex-93-19); Securities Exchange Act Release No. 32368 (May 25, 1993), 58 FR 31563 (June 3, 1993) (order extending approval of File No. SR-MSE-93-6); Securities Exchange Act Release No. 32367 (May 25, 1993), 58 FR 31570 (June 3, 1993) (order extending approval of File No. SR-PSE-93-6); Securities Exchange Act Release No. 32364 (May 25, 1993), 58 FR 31574 (June 3, 1993) (order extending approval of File No. SR-Phlx-93-16); Securities Exchange Act Release No. 32362 (May 25, 1993), 58 FR 31565 (June 3, 1993) (order extending approval of File No. SR-NYSE-93-23); Securities Exchange Act Release No. 33561 (February 1, 1994), 59 FR 5769 (February 8, 1994) (order extending approval of File No. SR-Amex-93-15); Securities Exchange Act Release No. 33562 (February 1, 1994), 59 FR 5792 (February 8, 1994) (order approving File Nos. SR-CHX-93-23; SR-BSE-93-18; SR-PSE-94-1; and SR-Phlx-94-7); and Securities Exchange Act Release No. 33563 (February 1, 1994), 59 FR 5795 (February 8, 1994) (order approving File No. SR-NYSE-93-51).

⁶ As requested by the Regional Exchanges, the Commission has granted an exemption from Rule 10a-1 under the Act to permit short sales of GTXT orders on the Exchanges without complying with the "tick" provisions of the rule, subject to certain conditions. See letters from Larry E. Bergmann, Associate Director, Division of Market Regulation, Commission, to William W. Uchimoto, General Counsel, Phlx, dated June 13, 1991; Daniel J. Liberti, Associate Counsel, MSE, dated June 13, 1991; Karen A. Aluise, BSE, dated June 13, 1991; and David P. Semak, Vice President, PSE, dated June 13, 1991.

⁷ See Securities Exchange Act Release No. 29237, *supra* note 5.

²⁵ 17 CFR 200.30-3(a)(12) (1991).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1993).

³ The CHX originally submitted File No. SR-CHX-93-23 to request permanent approval of its pilot program relating to price protection of limit orders. On December 22, 1993, the CHX filed Amendment No. 1 to the proposal requesting that, in addition, the Commission approve a three month extension of its pilot program until April 30, 1994. See letter from David T. Rusoff, Attorney, Foley & Lardner, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated December 21, 1993.

marketplace on a competitive level with the primary market.⁹

The Commission believes that the Regional Exchanges' programs demonstrate the competitiveness of the U.S. securities markets. As a result, investors have new opportunities for trading. Moreover, the Commission believes that the increased competition that results from permitting Regional specialists to attract GTX order should enhance the quality of customer order execution. In addition, the Commission believes that the Regional programs are consistent with the maintenance of fair and orderly markets and contribute to the practicability of brokers achieving a best execution for customer orders. The programs achieve this by imposing additional obligations on Exchange specialists to provide their customers with primary market price protection. Additionally, since the parameters of the rule are expressed clearly in the text of the rule and do not disturb the priority rules currently in force at the Exchanges, the programs provide fair and reasonable procedures for the protection of limit orders.

Furthermore, the Commission believes that, although specialists will know which limit orders are designed "GTX" and will manually execute GTX orders, they should not be able to use this information to their own advantage. The programs consist of execution guarantee systems. Specialist participation would be limited to filling the contra side of a customer limit order that is eligible, pursuant to the new rule, for a fill. The specialist would have no discretion in choosing which orders to fill and which priority to give orders. In addition, orders would be eligible to be filled according to the priority that already exists on the specialists' books. Thus, the Commission is satisfied that, although specialists will have knowledge of which limit orders have been designated GTX, they would not be able to use this knowledge to the detriment of investors because their participation in the execution of GTX orders will be limited. The Commission expects, however, that the Exchanges will monitor carefully the execution of GTX orders to ensure that specialists are not taking unfair advantage of this information.

The Commission continues to expect the Regional Exchanges, through use of their surveillance procedures, to monitor for, and report to the Commission, any patterns of

manipulation or trading abuses or unusual trading activity resulting from these programs. In addition, the Commission continues to request that the Exchanges keep the Commission apprised of any technical problems which may arise regarding the operation of the programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁹ that the proposed rule changes (SR-CHX-93-23, SR-BSE-93-24, SR-PSE-94-2, and SR-Phlx-94-8) are hereby approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-11030 Filed 5-6-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33985; File No. SR-DTC-94-03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Revised Fee Schedule for Services

May 2, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 1, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-94-03) as described in Items I, II, and III below, which items have been prepared primarily by DTC, a self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a revised fee schedule for DTC services.²

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change, which will be effective for services provided on and after March 1, 1994, is to adjust the fees charged for various services in order to bring the fees closer to, or to, their respective estimated service costs for 1994. Continuing DTC's annual practice to align service fees with estimated service costs, DTC's Board of Directors completed a review of DTC's estimated unit service costs for 1994 and adjusted many DTC service fees accordingly.

The 1994 fee schedule has been set to yield \$10 million less in operating revenues during the twelve months it will be in effect than the 1993 fee schedule would have yielded. This will mark the eighth consecutive year in which DTC has not had to increase its schedule of service fees to users; moreover, for the fifth consecutive year a fee reduction will be implemented.

The proposed rule change is consistent with the requirements of the Act and in particular section 17A(b)(3)(C) of the Act³ and the rules and regulations thereunder because fees will be more equitably allocated among DTC participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁴ and subparagraph (e)(2) of Securities Exchange Act Rule 19b-4⁵ because the proposed rule change establishes a due,

⁹ 15 U.S.C. 78s(b)(2) (1988).

¹⁰ 17 CFR 200.30-3(a)(12) (1993).

¹ 15 U.S.C. 78s(b)(1) (1988).

² The 1994 Revised DTC Service Fees schedule is set forth in its entirety in the Annex to Exhibit I in this filing, File No. SR-DTC-94-03.

³ 15 U.S.C. 78q-1(b)(3)(C) (1988).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

⁵ 17 CFR 240.19b-4(e)(2) (1993).

⁹ The Commission's rationale for approving the proposals on a pilot basis is contained in the discussion section of the original approval orders. The discussions in those orders are incorporated by reference into this order.

fee, or other change. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-94-03 and should be submitted by May 31, 1994.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-11031 Filed 5-6-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33981; File No. SR-GSCC-94-03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing of Proposed Rule Change Relating to Minimum Financial Standards for Bank Netting System Members

April 28, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 18, 1994, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission")

the proposed rule change (File No. SR-GSCC-94-03) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will lower the minimum shareholders' equity standard for GSCC bank netting system members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow GSCC to change the minimum shareholders' equity standard for bank netting system members. In 1989, prior to the commencement of GSCC's netting system, a minimum admission and continuance standard of \$250 million in shareholders' equity was established for banks or trust companies ("banks") that are, or are applying to become, members of GSCC's netting system. This level was chosen because, at the time, it encompassed roughly the 100 largest banks in the United States and, thus, reflected GSCC's initial focus on providing its netting and attendant risk protection services to only the largest market participants.

As part of its ongoing process of consideration of how best to broaden access to its netting and risk management services in a prudent manner, GSCC has determined it appropriate to lower the minimum shareholders' equity standard for bank netting system members, so as to allow a greater number of banks that are active participants in the government securities market to receive the benefits of GSCC's services.

Specifically, the proposed rule change would lower the minimum shareholders' equity standard for bank netting members to \$100 million. This standard would ensure that each bank netting member, while not necessarily among the largest banks in the country, is still a sizeable one.

In addition, GSCC would explicitly impose in its rules an additional standard on all bank netting system applicants and members; in particular, that their capital ratios (*i.e.*, total risk-based ratio, tier 1 risk based ratio, and tier 1 leverage ratio) meet the minimum levels specified by the applicable bank regulatory agency. In conjunction with this change, each bank netting member would be required to periodically report to GSCC each of its capital ratios for which its appropriate regulatory authority has established standards (or the capital ratios that it would be required to report to the Board of Governors of the Federal Reserve System ("Fed") if it were a Fed member bank). GSCC will routinely use such information on a bank netting member's capital ratios as a part of its ongoing surveillance of those members.

GSCC believes that since the proposed rule change allows GSCC to broaden access to its netting and risk management services so as to allow a greater number of banks and trust companies to receive the benefits of its services, it is consistent with Section 17A of the Act and the rules and regulations thereunder applicable to GSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. GSCC members will be notified of the rule filing, and comments will be solicited, by a GSCC Important Notice. GSCC will then notify the Commission of any written comments received by GSCC regarding the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such

⁶ 17 CFR 200.30-3(C)(12) (1993).

¹ 15 U.S.C. 78s(b)(1) (1988).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR-GSCC-94-03 and should be submitted by May 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-11032 Filed 5-6-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33992; File No. SR-NYSE-93-50]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Off-Hours Trading Facility.

May 2, 1994.

I. Introduction

On December 23, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), 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 request permanent approval of the Exchange's Off-Hours Trading facility.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33803 (March 22, 1994), 59 FR 14694 (March 29, 1994). No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NYSE requests permanent approval of its Off-Hours Trading ("OHT") facility.³ During the pilot, the NYSE submitted monitoring reports.⁴ The Commission's order approving the Exchange's Off-Hours Trading facility contained a two-year "sunset" provision.⁵ The Commission several times extended the "sunset" date for the Crossing Sessions I and II, most recently until April 30, 1994.⁶

The Exchange's OHT facility, consisting of Crossing Sessions I and II, extends the NYSE's trading hours beyond the 9:30 a.m. to 4 p.m. trading session ("regular trading session"). Crossing Session I permits the execution of single-stock, single-sided closing-price orders and crosses of single-stock, closing-price buy and sell orders. Crossing Session II allows the execution of crosses of multiple-stock (portfolios of 15 or more securities) aggregate price buy and sell orders.

Crossing Session I accepts orders in a particular stock for execution at the last price at which the stock traded on the NYSE during the 9:30 to 4 session. Two different types of closing-price orders could be entered into, and executed in, Crossing Session I: (1) Single-stock, single-sided orders ("closing-price single-sided orders") in round lots of up

to 99,900 shares only, including certain limit orders from the regular trading session; and (2) coupled single-stock orders (odd lots and partial round lots permitted), so long as both sides of such orders are not proprietary to members ("closing-price coupled orders").

Crossing Session I, which operates on each day that the Exchange is open, commences following the close of the regular trading session and ends at 5 p.m. Orders are executed at 5 p.m. Closing-price single-sided and coupled orders can be entered into the OHT facility only through the NYSE's Designated Order Turnaround System ("SuperDOT"), the Exchange's network of electronic order processing and post-trade systems. In addition, only NYSE-listed equity securities that have been designated by the Exchange and are not subject to a trading halt as of the close of the regular trading session may be entered into Crossing Session I.⁷

In addition to closing-price single-sided and coupled orders that are entered into the OHT facility after 4 p.m., certain limit orders that have migrated from the regular trading session would be able to participate in Crossing Session I. Members may designate unconditional round-lot limit orders entered during the regular trading session as "GTX" ("good 'til cancelled," executable through crossing session") to enable the orders to be executed against closing-price single-sided orders during Crossing Session I.⁸ When the NYSE closing price of a security is known, SuperDOT "sweeps" the specialists' limit order books for GTX orders that are at or better than the closing price and enters those orders into the OHT facility.⁹

Migrated GTX orders would retain the same priority among themselves as

⁷ The Exchange has stated that any SuperDOT-eligible issue, including rights, warrants, and American Depositary Receipts, may be entered into the OHT facility.

⁸ NYSE Rule 13 states that a good 'til cancelled (or "GTC") order to buy or sell remains in effect until it is either executed or cancelled.

⁹ Orders for an account in which the specialist, the specialist's member organization, or any associated party has an interest may not migrate to the OHT facility. If GTX is appended to (i) any market, stop, or stop limit order; (ii) any odd-lot order; or (iii) any order entered during the OHT session, the system would reject it. Under the proposal, NYSE members would not have access to the closing-price order file nor would NYSE systems indicate to specialists whether limit orders would be eligible for Crossing Session I.

¹⁰ Although the system would begin as soon as possible after the NYSE close by sweeping the limit order book for eligible GTX orders, as a practical matter, closing-price single-sided and coupled orders cannot be entered into the OHT facility until 4:15 p.m. in order to allow Exchange computer systems sufficient time to perform the mechanics necessary for commencement of the OHT facility.

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1993).

³ The NYSE also requested permanent approval of its pilot program for procedures regulating matched market-on-close orders ("MOC"). The Exchange subsequently withdrew the request for permanent approval of the matched MOC procedures. As a result, the matched MOC pilot expired on April 30, 1994. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Brandon Becker, Director, Division of Market Regulation, Commission, dated April 29, 1994.

⁴ See letters from Catherine R. Kinney, Executive Vice President, Equities/Audit, NYSE, to Brandon Becker, Director, Division of Market Regulation, Commission, dated September 30, 1993 and March 15, 1994.

⁵ See Securities Exchange Act Release No. 29237 (May 31, 1991), 56 FR 24853 (June 3, 1991) (File Nos. SR-NYSE-90-52 and SR-NYSE-90-53) ("OHT Approval Order").

⁶ See Securities Exchange Act Release Nos. 33563 (February 1, 1994), 59 FR 5795 (February 8, 1994), and 32362 (May 25, 1993), 58 FR 31565 (June 3, 1993).

existed on the specialist's book, and would have priority over all closing-price single-sided orders. Closing-price single-sided orders would have priority based on the time of entry into the OHT facility. Traditional rules of priority or precedence based on price or size would not apply to transactions effected in Session I. Closing-price coupled orders would be executed without regard to the priority of other orders entered into the OHT facility and would not interact with the single-sided orders.

Trading halts occurring during the regular trading session would affect trading in Crossing Session I. For instance, if a particular security is the subject of a trading halt at the end of the regular trading session, then Crossing Session I would not be available for that security that day. In addition, during the operation of Crossing Session I, the Exchange may announce that, as the result of news of a corporate development with respect to a particular security, it has determined to: (i) Return unexecuted GTX orders to the specialist's book, maintaining their priority; (ii) cancel all unexecuted single-sided or coupled orders in that stock; and (iii) preclude the entry of new closing-price orders into the OHT facility. Similarly, trading in Crossing Session I would not commence if market activity during the regular trading session were to trigger a market wide trading halt pursuant to NYSE Rule 80B, the circuit breaker rule,¹¹ and the trading halt was in effect at the close of the regular trading session.

At 5 p.m., both closing-price single-sided orders (including GTX orders) and closing-price coupled orders would be executed. Members may enter and cancel closing-price orders and GTX orders up until this time. Any closing-price single-sided orders not executed during Crossing Session I would expire; they would have to be re-entered to participate in the next day's opening. Unexecuted GTX orders would be returned to the book, maintaining their priority; therefore, they would participate in the next day's opening, unless cancelled prior to the opening by the entering broker. Closing-price coupled orders, which would be entered without the possibility of break-up, would be executed in full.

The NYSE implements trade reporting for Crossing Session I by reporting executions of closing-price single-sided orders and closing-price coupled orders at 5 p.m. over the high speed facility of

the Consolidated Tape Association ("CTA") Plan and the low speed line as two transactions per stock—one for closing-price single-sided orders (and GTX orders) and one for closing-price coupled orders. Each print would include the closing price and aggregate volume for each stock. Closing-price coupled orders are printed as "sold" sales.

Crossing Session II, which occurs from 4 p.m. to 5:15 p.m., is an aggregate-price session that enables members to enter crosses of buy and sell program orders that include at least 15 NYSE-listed stocks having a total market value of \$1,000,000 or more ("aggregate-price coupled orders"), and to effect their execution at an aggregate price.

Like closing-price single-sided orders and closing-price coupled orders, aggregate-price coupled orders could not be entered until after the close of the regular trading session. To participate in Crossing Session II, members transmit data regarding aggregate-price coupled orders to the Exchange via facsimile. Each side of the aggregate-price order entered on a coupled basis is executed against the other side without regard to the priority of other orders entered into the OHT facility. The facsimiles are time-stamped immediately and confirmed back to the entering brokers, thereby effecting continuous executions of aggregate-price coupled orders upon entry into the OHT facility.

The NYSE proposes to implement trade reporting for the aggregate-price session by reporting the total number of shares and the total market value of the aggregate-price trades. After 5:15 p.m., the NYSE would transmit the report over the high speed line as an administrative message.

A trading halt occurring during the regular trading session in one or more individual stocks would not affect the execution of aggregate-price coupled orders. Moreover, the unavailability of the OHT facility to one or more individual stocks due to post-4 p.m. corporate news would not affect the execution of aggregate-price coupled orders. NYSE Rule 80B, however, would have the same effect on Crossing Session II as it would have on Crossing Session I: a market-wide halt pursuant to Rule 80B that is still in effect at 4 p.m. would halt aggregate-price crossing.

III. Discussion

For the reasons discussed below, the Commission finds that permanent approval of the NYSE's OHT facility is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities exchange,¹² and in particular, with the requirements of sections 6(b)(5) and 11A.¹³ The Commission is approving the NYSE's OHT facility on a permanent basis because the Commission believes that the NYSE's OHT facility, comprised of Crossing Sessions I and II, is reasonably designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and remove impediments to and perfect the mechanism of a free and open market and a national market system.¹⁴

There has been an increasing trend toward the internationalization of the securities markets and the development of 24 hour markets in which world class securities can be traded around the globe.¹⁵ This has been accompanied by an increased desire among institutional investors to be able to trade U.S. stocks outside of regular trading hours. The NYSE has offered the OHT sessions in an effort to attract back to the U.S. order flow in NYSE listed securities that is being executed offshore.

In the Commission's order temporarily approving the NYSE's OHT facility, the Commission noted the benefits that would accrue to investors through the development of an after-hours trading session.¹⁶ The Commission stated its belief that Crossing Session I would provide investors whose orders were not executed during the regular trading session with another opportunity to have their orders executed at the NYSE

¹² See OHT Approval Order, *supra* note 5 for a complete description of the NYSE OHT facility and the Commission's rationale for approving the proposal on a pilot basis. The discussions in those orders are incorporated by reference into this order.

¹³ 15 U.S.C. 78f(b)(5) and 78k-1 (1988).

¹⁴ As previously noted, the NYSE also requested permanent approval of the Exchange's market-on-close ("MOC") pilot program. The NYSE withdrew this request on April 29, 1994. Accordingly, the matched MOC pilot expired on April 30, 1994. See *supra* note 3.

Concurrently with this order, the Commission is also permanently approving similar proposals submitted by the Chicago Stock Exchange, Inc., the American Stock Exchange Inc., the Philadelphia Stock Exchange, Inc., the Boston Stock Exchange, Inc., and the Pacific Stock Exchange, Inc. See File Nos. SR-CHE-93-23; BSE-93-24; SR-Amex-93-15; SR-Phlx-94-8; and SR-PSE-94-2.

¹⁵ See Division of Market Regulation, SEC, *The October 1987 Market Break*, at 11-1 to 11-2 (February 1988); *Report of the Presidential Task Force on Market Mechanisms*, at I-1 (January 1988). See also U.S. Congress, Office of Technology Assessment ("OTA"), *Trading Around the Clock: Global Securities Markets and Information Technology-Background Paper*, OTA-BP-CIT-66, (July 1990); U.S. Congress, OTA, *Electronic Bulls and Bears: U.S. Securities Markets and Information Technology*, OTA-CIT-469 (September 1990); and Division of Market Regulation, SEC, *Market 2000: An Examination of Current Equity Market Developments*, at 29 (January 1994).

¹⁶ See OHT Approval Order, *supra* note 5.

¹¹ NYSE Rule 80B provides procedures for a one-hour trading halt in the trading of all securities after a 250-point decline in the Dow Jones Industrial Average ("DJIA") and a two-hour trading halt after a 400-point decline.

closing price. Crossing Session I also would provide investors the flexibility to decide whether they want a particular order to participate in this Session. With respect to good til cancelled ("GTC") orders entered for execution during the 9:30 a.m. to 4 p.m. trading session, a customer would have the option of deciding whether to designate that order as a GTX (good til cancelled, executable through crossing session) order, thus allowing the order to migrate to Crossing Session I for possible execution. In addition, a customer would have the option of cancelling any order entered into Crossing Session I at any time prior to its execution at 5 p.m. The benefits of Crossing Session I would accrue to both individual and institutional investors. Moreover, the Commission stated its belief that Crossing Session I may help recapture overseas order flow by enabling firms wishing to facilitate portfolio trading strategies involving small programs of stocks that are not eligible for Crossing Session II to achieve executions at the NYSE closing price.

Similarly, the Commission stated its belief that Crossing Session II would benefit the investing public by offering members the opportunity to enter aggregate-price crossing portfolio orders with their customers after-hours to be executed against each other. The Commission recognized that Crossing Session II could help to recapture overseas trade of U.S. stocks by providing a mechanism by which portfolio trades arranged off the floor can be effected in an exchange trading system.

The OHT facility has proved to be successful during the pilot period. In its filing, the NYSE noted that in 1993, Crossing Session I averaged 175,000 shares per day and has averaged nearly 260,000 shares per day thus far in the fourth quarter of 1993. Members use Crossing Session I primarily for the execution of small, two-sided baskets which are ineligible for Crossing Session II and, most recently, for index rebalancing. Over 200 firms have received executions in Crossing Session I.

In addition, Crossing Session II has averaged approximately 3.9 million shares per day in 1993. To date, there have been 11 days where volume has exceeded 15 million shares, with the record being 57 million shares. The NYSE believes that Crossing Session II has successfully repatriated business from foreign after-hours markets; the Exchange's member firms have executed approximately 50 percent of all post-4 p.m. program trades in Crossing Session II.

Finally, data submitted by the NYSE in the monitoring reports does not indicate that trading in the OHT sessions has had any impact on volatility, spreads or block transactions during the last hour of the regular trading session.

Based on the above, the Commission believes that the NYSE's OHT facility has provided benefits to the marketplace. While the Commission recognizes that Crossing Session I is not a full auction market, the Commission believes it to be consistent with the maintenance of fair and orderly markets because it is a limited purpose facility designed to bring buyers and sellers together with the benefits associated with exchange trading. While it is not an auction market in terms of price discovery, the Commission notes that the NYSE closing price would not represent an artificial price, but rather a price that has been determined by auction market trading during the 9:30 a.m. to 4 p.m. trading session. Moreover, Crossing Session I also retains certain other characteristics of an auction market, such as maintaining auction priority rules for migrated limit orders. In addition, although Crossing Session II does not provide a traditional auction market for portfolio trades, the reality of the marketplace is that these portfolio trades currently are being effected off-exchange and, frequently, overseas. By bringing institutional trades that currently are being exported overseas within the purview of U.S. regulatory bodies, the marketplace generally benefits, for example, through Commission and Exchange oversight, trade reporting, and consolidated surveillance.¹⁷

In the original Approval Order the commission noted concerns about transaction reporting. The NYSE requested exemptive relief from the requirement of Rule 11Aa3-1(b)(2)(iv) under the Act that the NYSE disseminate on a consolidated basis trading volume for each of the component stocks traded in Crossing Session II. The Commission approved the exemption on a temporary basis but requested that the NYSE consider how to disseminate data on the volume of the individual stocks in the aggregate-price orders executed in Crossing Session II before the next day's opening. The NYSE has developed a plan under which the Exchange would collect the required trade detail information by T+3

¹⁷ The Commission continues to believe that the issue of linkages between markets remains open, and that should multiple, comparable after hours trading sessions develop, the resolution of intermarket issues would fall equally upon all marketplaces offering such sessions.

and would publish this information on an aggregate stock basis in the Daily Sales Report on T+4. The Commission acknowledges that this plan would provide more information to market participants.¹⁸ Nevertheless, the Commission believes the NYSE should continue to examine ways to report such information earlier.¹⁹

The Commission continues to expect the Exchange, through use of its surveillance procedures, to monitor for, and report to the Commission, any patterns of manipulation or trading abuses or unusual trading activity resulting from these programs. In addition, the Commission continues to request that the Exchange keep the Commission apprised of any technical problems which may arise regarding the operation of the programs.

IV. Conclusion

Based on the foregoing, the Commission finds that permanent approval of the OHT facility is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act²⁰ that the proposed rule change (SR-NYSE-93-50) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-11029 Filed 5-6-94; 8:45 am]
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[Release No. 34-34000; File No. SR-NASD-93-61]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Instituting Proceedings to Determine Whether to Disapprove Rule Change Relating to the SelectNet Service

May 3, 1994.

I. Introduction

On November 1, 1993, the National Association of Securities Dealers, Inc.

¹⁸ See letter from Katherine A. England, Assistant Director, Commission, to Catherine Kinney, Executive Vice President, NYSE, dated May 2, 1994.

¹⁹ The NYSE also requested and received an exemption from Rules 10a-1 under the Act to permit, subject to certain conditions, short sales of certain orders during the OHT sessions without complying with the "tick" provisions of the Rule; and interpretive advice under Rule 10b-18 under the Act to permit issuers to purchase their securities in the OHT Sessions. See letter from Larry E. Bergmann, Associate Director, Division of Market Regulation, Commission, to Catherine R. Kinney, Senior Vice President, NYSE, dated June 13, 1991.

²⁰ 15 U.S.C. 78s(b)(2) (1988).

²¹ 17 CFR 200.30-3(a)(12) (1991).

("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, a proposed rule change to modify the operational features of the SelectNet service.¹ The NASD is proposing to install a price validation screen that will prohibit entry of orders into SelectNet priced away from the inside market on Nasdaq. If approved, the NASD will amend the SelectNet User Guide to clarify that orders entered into SelectNet during normal market hours (9:30 a.m. to 4 p.m.) will be prohibited by the system if the orders are priced outside the best bid or offer in the Nasdaq system, unless unusual market conditions, such as locked, crossed, one-side, or no-quote markets exist in a security.

Notice of the proposed rule change appeared in the *Federal Register* on November 9, 1993.² Three comments opposing the NASD's proposal were received in response to the Commission release. The substance of these comments is discussed in detail below.

II. Description of SelectNet's Prohibition Against Entering Orders Outside the Inside Nasdaq Market

In response to the difficulties experienced in the Nasdaq market during the market break of October 1987, the NASD developed an auxiliary service, the Order Confirmation Transaction Service ("OCT"), to process orders during market extremes by providing an alternative method of negotiating trades when traditional telephone negotiation is difficult or infeasible. The Commission originally approved OCT in January 1988.³ OCT, renamed SelectNet in 1990, currently operates from 9 a.m. to 5:15 p.m.

¹ The NASD originally filed the proposed rule change on October 25, 1993 pursuant to section 19(b)(3)(A) of the Act. On October 29, 1993, the Commission issued an Order of Summary Abrogation abrogating the NASD's October 25th rule change. The Commission's Order of Summary Abrogation suggested that the procedures provided by section 19(b)(2) of the Act provide a more appropriate mechanism for determining whether the NASD's rule change is consistent with the Act. Thus, on November 1, 1993, the NASD refiled its rule change under section 19(b)(2).

² Securities Exchange Act Release No. 33141 (Nov. 3, 1993), 58 FR 59504 (Nov. 9, 1993).

³ Securities Exchange Act Release No. 25263 (Jan. 11, 1988), 53 FR 1430 (Jan. 19, 1988) (order approving SelectNet, previously referred to as the Order Confirmation Transaction Service, on a Temporary accelerated basis). See also, Securities Exchange Act Release No. 25523 (Mar. 28, 1988), 53 FR 10965 (Apr. 4, 1988) (order extending temporary approval of SelectNet); Securities Exchange Act Release No. 25690 (May 11, 1988), 53 FR 17523 (May 17, 1988) (order granting permanent approval of SelectNet).

Eastern Time,⁴ and increases communications capacity by enabling eligible firms to enter electronic messages. SelectNet supports the continuous, orderly operation of the Nasdaq Stock Market during difficult or unusual market conditions. Since in inception, the NASD has enhanced SelectNet in an effort to provide greater flexibility in the automated execution of orders and to facilitate market maker's and order entry firms' (collectively referred to as "participants") use of SelectNet.⁵

The service currently allows participants to broadcast orders to all market makers in a security or direct order to a specific market maker. In addition, market makers can broadcast to all participants watching a particular security (a feature known as "all call"). To enter an order in SelectNet, a participant enters the normal trade information (i.e., security symbol, side, size, and price). In addition, the participant may provide that an order or counter-offer will be in effect for anywhere from 3 to 99 minutes, specify a day order, or indicate whether price and/or size are negotiable or whether a specific minimum quantity is acceptable.⁶ Participants may accept, counter or decline a SelectNet order. In the event that a participant elects to counter an offer, the service allows negotiations to be conducted between the participants by exchanging counter-offers until an agreement is reached.

A. The NASD's Basis for the Prohibition

The NASD seeks to amend the SelectNet operating manual⁷ to prohibit entry of orders in SelectNet priced outside the inside Nasdaq market during normal market hours (:30 a.m. to 4 p.m.), unless unusual market conditions, such as locked, crossed, one-sided, or no-quote markets exist in

⁴ Securities Exchange Act Release No. 30581 (Apr. 14, 1992), 57 FR 14596 (Apr. 21, 1992).

⁵ Securities Exchange Act Release No. 28636 (Nov. 21, 1990), 55 FR 49732 (Nov. 30, 1990).

⁶ The identity of a participant entering an order is anonymous when broadcasting an order, unless the participant elects to identify itself; once the order is executed, each participant to the transaction learns of the identity of the other. In contrast, the recipient of a directed order is provided with the identity of the participant who sent the order.

⁷ The current SelectNet rules are contained in the SelectNet User Guide, but are not included in the NASD Manual. See SelectNet User Guide (Nov. 1990). The NASD has represented that it will update these rules and submit, by March 31, 1994, a rule filing, pursuant to section 19(d) of the Act and Rule 19b-4 thereunder, to incorporate the SelectNet rules into the NASD Manual. Letter from Beth E. Weimer, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (Jan. 14, 1994). To date, the Commission has not received this filing.

a security. The NASD had represented that it is proposing to prohibit entry of orders priced outside the inside Nasdaq market to eliminate a large number of what it believes to be erroneous transactions occurring through the service.

The NASD believes that these orders are put into SelectNet in two ways: (1) as errors, where the party intended to place the order at or within the inside bid and offer and mistyped the trade information into SelectNet, ignored the reverse colored warning screen and instructed the computer to override the warning, or (2) as a "concerted attempt to trick" recipients of the orders into executing obviously erroneous trades.⁸

In support of its position, the NASD included in its filing with the Commission part of the results of an analysis of SelectNet orders and trades during September 1993. According to the NASD, the analysis demonstrates that, on average, over 1,000 orders a day are placed in SelectNet at prices outside the inside Nasdaq market. According to the NASD, this resulted, on average, in more than 100 executions a day at prices the NASD has concluded, without input from the parties of the transactions, are erroneous and wholly unrelated to current market prices. The NASD further represented that during September 1993 it received, in total, 46 requests to reverse trades as clearly erroneous,⁹ notwithstanding the daily average of 100 executions at prices outside the inside Nasdaq market.

Subsequently, the NASD provided the Commission with more specific information concerning the NASD's analysis of SelectNet orders and trades during September 1993.¹⁰ This information indicated that during the month, 34,957 (on average, 1,665/day) orders were entered in SelectNet outside

⁸ For example, if the inside market in a Nasdaq security is 20 bid, 20 1/4 offer, and order entry firm may place an order to buy stock priced at 19 1/4. According to the NASD, traders traditionally deal in fractions, frequently not even stating the integer amount of a price when transacting business over the telephone, and an order priced at 19 1/4 could be read or interpreted as 20 1/4. Thus, the market maker would accept the order, believing that it was executing an order priced within the spread, at 20 1/4. Instead, the market maker would have executed the order a full point below the price it thought it was getting, and 1/4 of a point below the best bid.

⁹ Letter from Robert E. Aber, Vice president and General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (Jan. 14, 1994).

¹⁰ Letter from Beth E. Weimer, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (Mar. 7, 1994). In its letter to the Commission, the NASD requested confidential treatment of the information accompanying its letter. The NASD requested this treatment pursuant to 17 CFR 204.24b-2 and Exemption 4 of the Freedom of Information Act (5 U.S.C. § 552(b)(4)).

the inside Nasdaq Market and that 2,802 (on average, 133/day) of these orders were executed. In addition, this information indicated that during September 1993 the NASD received 44 requests to deem trades clearly erroneous where the trade occurred outside the inside Nasdaq Market. This information further indicated that the NASD granted 32 of these requests.

B. Exceptions to the Prohibition

The NASD has determined to allow entry of orders on SelectNet outside the inside Nasdaq market under three circumstances. Any order entered during an exception period, described below, will remain active in SelectNet even after the exception period has passed.

1. Pre-Opening and Post-Closing Exception

Because the inside Nasdaq market during non-market periods might not reflect current market conditions and, therefore, may be one-sided or may simply reflect the closing bid and offer on Nasdaq, the prohibition of entering orders outside the inside Nasdaq market will only be in effect during normal market hours (i.e., 9:30 a.m. until 4 p.m.)

2. Exception for Locked, Crossed, One-Sided Quote or No Quote Markets

If the market in a security becomes locked or crossed or experiences a one-sided quote or no quote, the NASD will allow entry of orders outside the inside Nasdaq market. In the event of these unusual market conditions, SelectNet will be programmed to lift the prohibition automatically for that security until the unusual condition no longer exists.

3. Exception for Emergency Conditions or Extraordinary Market Conditions

Under Article VII, Section 3 of the NASD By-Laws,¹¹ the NASD will retain authority to lift the prohibition during an emergency or when extraordinary market conditions exist.¹²

¹¹ NASD Manual, By-Laws, Art. VII, Sec. 3, (CCH) ¶ 1182A.

¹² "Emergency conditions" include unexpected events such as a declaration of war, a presidential assassination or an electrical black-out. "Extraordinary market conditions" include market breaks (such as October 1987), market declines and any other occasions where the market is experiencing highly volatile trading conditions such that prompt intervention is necessary for the market's continued efficient operation. Securities Exchange Act Release No. 26072 (Sept. 12, 1988), 53 FR 36143 (Sept. 16, 1988) (order approving rule to provide the NASD Board of Governors and a proposed committee the authority to take action during an emergency or under extraordinary market conditions). See also, Securities Exchange Act

III. Comment Letters

The Commission received three comments letters in response to the NASD's proposed rule change.¹³ Two of these commenters opposed approval of the NASD's proposed rule change. Without explicitly opposing the NASD's proposed change, the third commenter generally criticized the SelectNet Service and used its response to the NASD's filing to support its continuing contention that SelectNet is a "quotation driven trading system" rather than a communication system. The NASD responded to the issues raised by the commenters in a letter dated January 14, 1994.¹⁴

One commenter opposing the proposal argued that there are legitimate risk management and trading strategies that involve entering orders outside the inside Nasdaq market.¹⁵ Another commenter opposing the proposal argued that entering orders outside the inside market is typical practice when dealing with large retail orders and during volatile market conditions.¹⁶ This commenter took further exception with the NASD's assertion that it must review and reverse as clearly erroneous many of the orders executed outside the inside Nasdaq market, offering examples of instances where the NASD refused to reverse a trade executed outside the inside Nasdaq market. In addition, this commenter argued that the NASD's proposed prohibition is not necessary because SelectNet includes a feature that alerts participants who accept orders priced outside the inside market and requires confirmation of the participant's acceptance of such orders.

In response, the NASD acknowledged that legitimate bases exist for entering orders outside the inside Nasdaq market.¹⁷ Nonetheless, the NASD has

Release No. 33292 (Dec. 6, 1993), 58 FR 65214 (Dec. 13, 1993) (NASD Policy Statement on Market Closings in the event of an emergency or extraordinary market conditions).

¹³ Letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange ("NYSE"), to Jonathan Katz, Secretary, SEC (Nov. 30, 1993). The NYSE's letter also referred to another pending NASD proposed rule change which would include exchange listed securities in SelectNet (File No. SR-NASD-92-16). The focus of the NYSE's letter concerned SR-NASD-92-16 and SelectNet in general.

¹⁴ Letter from Robert E. Aber, Vice President and General Counsel, NASD, to Selwyn J. Notelovitz, Branch Chief, SEC (Jan. 14, 1994).

¹⁵ Letter from Harold S. Bradley, Vice President and Director of Trading, Investors Research Corporation, to Jonathan G. Katz, Secretary, SEC (Dec. 8, 1993).

¹⁶ Letter from Simon S. Kogan to Margaret McFarland, Deputy Secretary, SEC (Dec. 1, 1993).

¹⁷ Letter from Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market, Inc., to Selwyn Notelovitz, Branch Chief, SEC (Jan. 14, 1994).

determined that on balance, the benefits of the prohibition outweigh the costs. The NASD argued that erroneous trades are costly to the industry and, when reported to the tape, mislead and confuse issuers and investors. Moreover, the NASD pointed out that the alternative of negotiating a trade outside the inside Nasdaq market over the telephone remains.

IV. Proceedings to Determine Whether to Disapprove SR-NASD-93-61 and Grounds for Disapproval Under Consideration

The NASD's proposal is presented as an effort to prevent market makers from inadvertently executing SelectNet orders at prices outside the inside market. Nevertheless, prohibiting the entry of SelectNet orders at prices outside the inside market may be neither the most effective means of accomplishing this objective nor the least restrictive. Accordingly, the Commission is interested in the reasons market participants may have for entering SelectNet orders outside the inside market, and whether there may be less restrictive means of preventing erroneous trades.

The Commission, therefore, is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be disapproved. Institution of disapproval proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of disapproval proceedings, however, does not indicate that the Commission has formulated any conclusions with respect to any of the issues involved and the Commission seeks and encourages interested persons to comment on the proposed rule change. The sections of the Act applicable to the proposed rule change include:

- Section 15A(b)(6), which requires that the rules of a national securities association, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.
- Section 11A(a)(1)(B), which sets forth the Congressional finding that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

- Section 11A(a)(1)(C), which sets forth the Congressional finding that it is in the public interest to assure economically efficient execution of securities transactions.
- Section 11A(a)(2), which directs the Commission to facilitate the establishment of a national market system for securities in accordance with the findings set forth in Sections 11A(a)(1) (B) and (C).

With respect to the proposal, the Commission specifically requests that commenters address, if applicable, the following items:

(a) The NASD acknowledges that legitimate bases exist for entering SelectNet orders at prices outside the inside market. These could include: (i) Communicating limit orders to market makers; (ii) negotiating large block transactions; (iii) obtaining executions in fast markets; or (iv) exploring the level of market interest at the prices quoted in Nasdaq. The Commission invites comment on the circumstances in which a market maker or customer would use SelectNet to enter orders outside the inside market.

(b) The NASD submitted data indicating that during the month of September 1993, although approximately 130 trades are executed daily (2,730 per month) through SelectNet outside the inside market, it received a total of only 44 requests to reverse trades as clearly erroneous and granted 32 of these requests. One commenter opposed to the proposal submitted copies of two NASD decisions upholding trades executed through SelectNet outside the inside market. As such, the Commission invites commenters to discuss whether such decisions reflect aberrations based on special circumstances or reflect legitimate use of SelectNet and of the Nasdaq market. The Commission also invites SelectNet users to discuss whether they cancel executions outside the inside by agreement with the other party (and therefore not reflected in the NASD's data) and/or if they choose not to cancel/seek reversal for other reasons (e.g., determination that cancelling/reversing is not worth the administrative cost).

(c) The Commission invites suggestions for alternative means to prevent erroneous SelectNet executions, such as the development by member firms of facilities for preventing inadvertent executions.

(d) The extent, if any, to which investors may be confused by reports to the type of trades effected outside the inside Nasdaq market using SelectNet.

(e) The potential benefits of the proposal and whether those benefits

outweigh any costs or burdens imposed on members and/or public customers.

(f) Order delivery systems exist in and among other markets. The rules of some of these systems, such as the Intermarket Trading System (ITS), prohibit limit orders and create a conclusive presumption that an order executed outside the inside bid or offer is an obvious error. Other systems, on the other hand, such as the New York Stock Exchange's SuperDot System, allow limit orders and have no restrictions on the price of orders. The Commission invites commenters to discuss the distinctions among these systems with respect to the issues raised by the NASD.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with the provisions of the Act and the rules and regulations thereunder, specifically sections 15A(b)(6), 11A(a)(1) (B), and (C). Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, arguments and data, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.¹⁸

Interested persons are invited to submit written data, views and arguments regarding the proposed rule change by June 8, 1994. Section 19(b)(2) of the Act requires that proceedings to determine whether to disapprove a proposed rule change be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change, unless the Commission finds good cause to extend the time for the conclusion of such proceedings. To provide ample opportunity for commenters to submit views and for the Commission to give consideration of these views, the Commission finds good cause to extend

¹⁸ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

the time for the conclusion of the proceedings.

Persons desiring to submit written data, views and arguments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-NASD-93-61.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the NASD.

By the Commission,
Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-11075 Filed 5-6-94; 8:45 am]
BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Collins & Aikman Group, Inc., 15% Subordinated Notes Due 1995; 11 3/4% Usable Subordinated Debentures Due 1997; 7 1/2% 10% Debentures Due 2005) File No. 1-6761

May 3, 1994.

Collins & Aikman Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Exchange, the Operating Committee of the Board of Directors of the Company ("the Committee"), pursuant to lawfully delegated authority, unanimously approved resolutions on February 15, 1994, to withdraw the Company's Debt Securities from listing on the PSE and to maintain its listing of the Debt Securities on the Amex. The decision of the Committee followed a study on the

matter, and was based upon the belief that the listing of the Debt Securities on the PSE was no longer beneficial to the Company because:

The Company undertook a study of the costs of its dual listing of the Debt Securities on the PSE and the Amex and determined that the continuance of such dual listing was no longer cost-effective in light of the absence of significant trading volume for the Debt Securities on the PSE, the presence of a substantial national and liquid market for these securities on the Amex and the continuing need for the Company to reduce the costs of doing business in the current competitive environment in which the Company operates.

The debt securities were originally listed on the PSE, in part, because the Company was headquartered in California, and had retail stores (Builders Emporium, Wickes Furniture, Orchard Supply Hardware, Mode O Day, Womens World, and Toy World) and manufacturing facilities located in California. Those operations have been closed or sold. The Company's remaining businesses are primarily located in the Southeast and, in 1993, the Company moved its headquarters to North Carolina. As a result, it feels that a PSE listing is no longer beneficial.

Any interested person may, on or before May 24, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 94-11077 Filed 5-6-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20266; File No. 812-8858]

John Hancock Mutual Variable Life Insurance Account UV, et al.

May 2, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: John Hancock Mutual Variable Life Insurance Account UV ("Variable Account UV"), John Hancock Variable Life Account V ("Variable Account V"), John Hancock Mutual Life Insurance Company ("John Hancock"), and John Hancock Variable Life Insurance Company ("JHVLICO"). (Variable Account UV and Variable Account V shall be referred to collectively as the "Variable Accounts"; the Variable Accounts, John Hancock, and JHVLICO shall be referred to collectively as the "Applicants.")

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under Section 6(c) of the 1940 Act for exemptions from the following: those provisions of the 1940 Act and those rules specified in paragraph (b) of Rule 6e-2 thereunder, other than sections 7 and 8(a); sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f) of the 1940 Act; and Rules 6e-2(b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(viii), (c)(1) and (c)(4), 22c-1, and 27f-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to offer and sell certain multi-option variable life insurance policies (individually, the "Policy," collectively, the "Policies") that provide for the following: A death benefit which will not always vary based on investment performance; both a contingent deferred sales charge and a sales charge deducted from premiums, neither of which is subject to refunds; deduction of an administrative surrender charge on lapse or surrender; deduction from the Policy's account value of cost of insurance charges, charges for substandard mortality risks and incidental insurance benefits, and minimum death benefit guarantee risk charges; values and charges based on the 1980 Commissioners' Standard Ordinary Mortality Tables (the "1980 CSO Tables"); elimination of, or reduction in, front-end sales charges in certain cases; the holding of mutual fund shares funding the Variable Accounts in an open account arrangement, without a trust indenture and the use of a trustee; and a "free look" right which may provide for the return of amounts other than total premiums paid upon cancellation of a Policy.

FILING DATE: February 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a

hearing. Interested persons may request a hearing by writing the Secretary of the Commission, and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 27, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, John Hancock Place, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Wendell M. Faria, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. An application very similar to this one was filed by Variable Account V, JHVLICO, and John Hancock on August 18, 1987 (File No. 812-6835). An order was granted by the Commission on December 29, 1987.¹ A second, very similar application was filed by Variable Account UV and John Hancock on June 3, 1993 (File No. 812-8426). An order was granted by the Commission on September 29, 1993.² Applicants are filing this new application because John Hancock and JHVLICO are proposing to issue a new form of Policy which contains changes in certain features of the policies described in those 1987 and 1993 applications. The changes relate principally to the forms of death benefit which may be elected by the Policy owner, the minimum premium requirements, the pricing of the Policy, and the elimination of certain Policy provisions relating to the use of any "excess value"³ available under the

¹ The original application was amended on November 12, 1987. The notice of the filing of the application was issued on November 30, 1987 (Investment Company Act Release No. 16152); an order was granted on December 29, 1987 (Investment Company Act Release No. 16197).

² Investment Company Act Release No. 19746 (Sept. 29, 1993).

³ "Excess value" may result from favorable investment performance, the insurers' deduction of Policy charges at less than the maximum

Continued

Policy. In most other respects, the Policies retain the essential nature of the policies that were the subject of the 1987 and 1993 applications.

2. John Hancock is a mutual life insurance company chartered under the laws of Massachusetts in 1862. JHVLICO, a subsidiary of John Hancock, is a stock life insurance company organized under the laws of Massachusetts in 1979. (John Hancock and JHVLICO are sometimes referred to herein as the "insurers.")

3. The Board of Directors of John Hancock established Variable Account UV on May 10, 1993, pursuant to Massachusetts law. Each Variable Account is registered under the 1940 Act as a unit investment trust type of investment company. Variable Account UV and Variable Account V are separate investment accounts of John Hancock and JHVLICO, respectively, to which assets will be allocated from time to time to support benefits payable under each insurer's variable life insurance policies, including the Policies.

4. Variable Account UV and Variable Account V each consists of seven subaccounts (the "Subaccounts"), each of which will invest its assets in a different portfolio of John Hancock Variable Series Trust I (the "Fund"). Subaccounts may be added or deleted from time to time.

5. The Policy incorporates certain fundamental features characteristic of scheduled premium variable life insurance policies contemplated by Rule 6e-2, including a guarantee against lapse if specified required premiums are paid by their due dates.⁴ In addition, Policy owners will have the options of:

- (i) Making premium payments in excess of the required premiums, or
- (ii) Omitting required premium payments due at any time when there is any excess value under the Policy.

6. The insurers will deduct a premium expense charge of 8.6% of each premium paid. This deduction is

guaranteed rates, or the payment of premiums in excess of the required premiums.

⁴The required premiums are level until the insured reaches age 70. At that time, a "premium recalculation" is performed, if the Policy owner has not previously elected to have the premium recalculated. The premium recalculation may result in lower or higher subsequent required premiums.

In addition to the "base policy premium" under a Policy (i.e., an amount determined at Policy issuance based on the age, gender, and smoking status of the insured,) the required premium for each Policy year includes an additional amount if the insured is in a substandard risk category or if optional fixed insurance benefits have been added to the Policy by rider. Part of this additional premium will be collected by the insurers out of any premium payments which are paid during the year. The remaining additional premium will be deducted from cash value in equal monthly installments during the year.

for sales expenses (5%) and state premium taxes (2.35%), and a federal deferred acquisition cost tax charge (1.25%).⁵

7. The insurers will waive a portion of the sales charge deducted from each premium paid on a Policy with a guaranteed death benefit of \$250,000 or higher. The continuation of this waiver, however, is not contractually guaranteed, and the waiver may be withdrawn or modified by the insurers at any time. Moreover, because the initial guaranteed death benefit may be reduced after issue, it is possible that the waiver could apply at some times with respect to a given Policy and not at a subsequent time with respect to the same Policy. The deduction from premiums for sales expenses during any Policy year is limited to 5% of premiums paid in that year that do not exceed one year's required premium.

8. The insurers also will deduct a contingent deferred sales charge ("CDSC") upon surrender or lapse of a Policy during the first thirteen Policy years. The CDSC is a percentage of the lesser of (a) the total amount of premiums paid before the date of surrender or lapse or (b) the sum of the base policy premiums due on or before the date of surrender or lapse. Excess value may be withdrawn from the Policy without imposition of any CDSCs.

9. The maximum CDSC is an amount equal to 15% of the base policy premium for the first through sixth Policy years. The greatest CDSC will be applied to Policies that are surrendered or lapse at the end of Policy years six or seven. In the seventh through thirteenth Policy years, the CDSC decreases each Policy year until it is zero in and after the fourteenth Policy year.

10. A portion of the CDSC will be charged on a partial surrender of the guaranteed death benefit during the first thirteen Policy years.

11. The total dollar amount of sales load under a Policy is no higher than that permitted by Rule 6e-2(b)(13) for a conventional scheduled premium variable life insurance policy, and a Policy owner who surrenders his or her Policy or whose Policy lapses prior to the fourteenth policy year pays no more dollars in sales load than could be charged if the load were deducted entirely from premiums.

⁵The deferred acquisition cost component of the premium expense charge will be deducted by Applicants in conformity with, and reliance upon, previously obtained exemptive relief. Investment Company Act Rel. No. 19868 (Nov. 24, 1993), 55 SEC Docket 1446 (Dec. 7, 1993) (File No. 812-8446).

12. An issue charge will be deducted from account value on monthly anniversaries in twelve equal installments of \$20 per Policy in the first Policy year. This charge is to help cover expenses incurred in connection with the issuance of the Policy, other than sales expenses. Such expenses include medical examinations, insurance underwriting costs, and costs incurred in processing applications and establishing permanent Policy records. This charge is not designed to yield a profit to Applicants.

13. An administrative surrender charge may be deducted if the Policy is surrendered or lapses in the first nine Policy years. This charge is to compensate partially for estimated administrative expenses such as the cost of collecting and processing premiums, processing applications, conducting medical examinations, establishing Policy records, determining insurability and assigning the insured to a risk classification, and issuing the Policy. These expenses exclude any costs properly attributable to sales or distribution activity.

14. The maximum administrative surrender charge is \$5 per \$1000 of the Policy's guaranteed death benefit if the lapse or surrender is in the first six Policy years, \$4 per \$1000 of its guaranteed death benefit if the lapse or surrender is in the seventh or eighth Policy years, and \$3 per \$1000 of guaranteed death benefit if the lapse or surrender is in the ninth Policy year. For insureds age 24 or younger at time of issue of a Policy, the charge will never exceed \$200 and will be charged only in the first four Policy years.

15. Currently, the insurers do not intend to assess an administrative surrender charge with respect to a Policy of \$250,000 or more of guaranteed death benefit at the time of surrender or lapse. Nor do the insurers currently intend to assess such a charge if a Policy of less than \$250,000 of guaranteed death benefit is surrendered or lapsed after the fourth Policy year. The insurers currently intend to charge no more than \$300 for a surrender or lapse in the first four Policy years of a Policy of less than \$250,000 of guaranteed death benefit. These lower current charges may be withdrawn or modified by the insurer at any time.

16. A maintenance charge will be deducted from account value on each monthly anniversary at a rate of \$6 (which monthly rate may not be raised to more than \$8) per Policy. This charge is to help cover the ongoing costs of administering a Policy, and is not designed to yield a profit to Applicants.

17. Twenty-five dollars (\$25) will be deducted from account value upon each withdrawal of excess value. This charge will be designed only to defray the estimated costs of effecting excess value withdrawals.

18. Each insurer will assess a daily mortality and expense risk charge at an effective rate of 0.6% per annum of the Variable Account assets attributable to the Policy. This charge is for the risk that insureds may live for shorter periods of time than estimated, and that costs of issuing and administering the Policies may be higher than estimated.

19. Each insurer will deduct cost of insurance charges from account value on each monthly anniversary of a Policy at rates that do not exceed those prescribed in the 1980 CSO Tables. Generally, the actual rates initially charged will be lower than the maximum guaranteed rates, and insureds in a non-smoker or preferred category will have more favorable cost of insurance rates than insureds in the standard risk classification.

20. The insurers also will charge lower current cost of insurance rates under a Policy with a current guaranteed death benefit of \$250,000 or more. These lower cost of insurance rates are not contractually guaranteed, and may be changed or withdrawn by the insurers at any time.

21. The insurers reserve the right to make charges for federal, state, and local taxes. Fund investment advisory expenses and certain other operating expenses of the Fund are indirectly borne by Policy owners.

22. The insurers impose two death benefit guarantee risk charges:

- (i) A monthly charge of up to \$0.03 (currently \$0.01) per \$1,000 of guaranteed death benefit; and
- (ii) Up to 3% (currently 1.5%) of the amount applied on a premium recalculation, where the new level premium is less than what it would have been had the Policy originally been issued without the premium recalculation feature. These charges compensate the insurers for the risk that they assume in guaranteeing death benefits under the Policies, including the risk that the account value will not be sufficient to support the guarantees.

23. Under the laws of some states, the insurers may now or in the future be required to credit investment losses and gains during the "free look" period to Policy owners who exercise their "free look" right. In such cases, and under the terms of the Policy, the insurers will refund the sum of the account value as of the date the insurers receive the returned Policy, plus the sum of all charges deducted from premium

payments and all other charges imposed on amounts allocated to the Variable Accounts.

Applicants' Legal Analysis and Conclusions

Applicants request exemptions pursuant to section 6(c) of the 1940 Act from: Those provisions of the 1940 Act and those rules specified in paragraph (b) of Rule 6e-2 thereunder, other than sections 7 and 8(a); sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f) of the 1940 Act; and Rules 6e-2(b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(viii), (c)(1) and (c)(4), 22c-1, and 27f-1 thereunder. Applicants seek these exemptions to the extent necessary to permit them to offer and sell the Policies.

A. Request for Exemptions Relating To Definition of "Variable Life Insurance Contract"

1. Rule 6c-3 grants exemptions from numerous provisions of the 1940 Act to separate accounts of life insurance companies that support variable life insurance policies. The exemptions provided by Rule 6c-3 are available only to registered separate accounts whose assets are derived solely from the sale of "variable life insurance contracts" that meet the definition set forth in Rule 6e-2(c)(1) or "flexible premium variable life insurance contracts" that meet the definition set forth in Rule 6e-3(T)(c)(1) under the 1940 Act, and from certain advances made by the insurer.

2. A "variable life insurance contract" is defined in Rule 6e-2(c)(1) to include only life insurance policies that provide both a death benefit and a cash surrender value which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an amount stated in the policy. The required guaranteed minimum death benefit need be provided only so long as premiums are duly paid in accordance with the terms of the policy.

3. At the time of application for a Policy, the owner may select from three death benefit options. One of the options is a variable death benefit which generally is equal to the sum of the guaranteed death benefit and any excess value. The remaining two options provide a level death benefit which generally is equal to the guaranteed death benefit.

4. The variable death benefit under the Policy will vary based upon investment performance to the extent that favorable investment performance

creates excess value that is applied to increase the guaranteed death benefit. The death benefit under any Policy will vary with investment performance when the account value is sufficiently large that, in order to qualify the Policy as life insurance for federal income tax purposes, the death benefit must be increased. This could happen, for example, because of very favorable investment performance, the payment of excess premiums, or both. Indeed, in anticipation of such variations, the Policy owner, by choosing among the available death benefit options, determines whether the "guideline premium and cash value corridor test" or the "cash value accumulation test" (as defined in each case in section 7702 of the Internal Revenue Code) will be used for this purpose.

5. Applicants submit that the death benefit under the Policy varies to reflect investment experience within the meaning of Rule 6e-2(c)(1). Applicants concede, however, that the death benefit under the Policy is not precisely the type of variable death benefit contemplated when Rule 6e-2 was adopted, and that the Policy contains other provisions that are not specifically addressed in Rule 6e-2. Accordingly, Applicants request exemptions from the definition of "variable life insurance contract" in Rule 6e-2(c)(1) and from all sections of the 1940 Act and rules thereunder specified in Rule 6e-2(b) (other than sections 7 and 8(a)), under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e-2(a), and to the extent necessary to permit the offer and sale of the Policy in reliance on Rule 6e-2, except as otherwise set forth herein.

6. Applicants submit that the definition of "variable life insurance contract" in Rule 6e-2(c)(1) was drafted at a time when all the variable life insurance policies then contemplated clearly met this definition, and that the considerations that led the Commission to grant the exemptions in Rule 6e-2 did not depend in any material way upon the fact that the death benefit, as well as cash values, varied with investment experience. Nor did such consideration depend on whether a scheduled premium policy also provided for substantial premium payment flexibility and other features so long as the scheduled premiums, if paid when due, provided for a minimum death benefit guaranteed to at least equal the initial face amount.

7. Applicants submit that, under the types of variable life insurance policies that have been issued in reliance on Rule 6e-2, the extent to which favorable

investment experience is used to increase death benefits rather than cash values differs considerably among the policies offered by different issuers. Applicants further submit that, under all policy designs, the degree to which investment performance changes the death benefit necessarily has an impact on cash values under the policy.

8. Applicants assert that, generally speaking, higher death benefits require higher cost of insurance deductions, which in turn result in lower cash values. Applicants submit that it is desirable for purchasers to be free to choose a benefit structure which they believe suits their own needs with respect to the relationship of cash value, death benefit and investment performance. Applicants represent that Policy owners can do this within the framework of the Policy by, for example, deciding which of the three available death benefit options to select.

9. Applicants further submit that the considerations that led the Commission to adopt Rules 6e-3 and 6e-2 apply equally to each Variable Account and the Policy, and that the exemptions provided by these rules should be granted to Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested herein.

10. Applicants note that proposed amendments to Rule 6e-2 would amend Rule 6e-2(c)(1) to require only that the death benefit may vary based on investment performance.

B. Request for Exemptions Relating to Sales Charges

1. Sections 26(a)(2) and 27(c)(2) may be construed to require that proceeds of all payments under a Policy be deposited in the appropriate Variable Account and that no payment be made from the Variable Account to either insurer or any affiliated person of either insurer, except for bookkeeping and other administrative services. Each insurer's imposition of a CDSC may be deemed inconsistent with the foregoing provisions, to the extent that the deduction would constitute payment for an expense not specifically permitted. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the CDSC to be deducted, as described herein, upon surrender (full or partial) or lapse of a Policy.

2. Section 2(a)(35) and Rules 6e-2(b)(1) and (c)(4) may be construed to contemplate that the sales charge for a variable life insurance policy will be deducted from premiums. Each insurer's deduction of a CDSC may be deemed inconsistent with these

provisions. Applicants request exemptions from section 2(a)(35) and Rules 6e-2(b)(1) and (c)(4), to the extent necessary to permit part of the Policy's sales charge to be deducted from premium payments, and part as a CDSC.

3. Applicants submit that Rule 6e-2(c)(4) can be construed to comprehend a sales charge imposed on other than premiums. This is because the definition is an intellectual construct rather than a reflection of the actual methodology of administering variable life insurance policies, referring, in paragraphs (i) and (ii), for example, to other amounts that are not deducted from premiums.

4. Section 27(a)(1) and Rule 6e-2(b)(13)(i) may be construed to contemplate that the sales charge under the Policy will be deducted from premiums. Each insurer's deduction of part of its sales charge on a contingent deferred basis may be deemed inconsistent with the foregoing provisions, to the extent that the sales charge is deducted from other than premiums. Applicants request an exemption from these provisions to the extent necessary to permit part of the Policy's sales charge to be deducted from premium payments, and part to be deducted as a CDSC.

5. Sections 2(a)(32), 27(c)(1), and 27(d), in pertinent part, prohibit Applicants from selling the Policy unless it is a "redeemable security." * Rules 6e-2(b)(12), (b)(13)(iv), and (b)(13)(v) afford exemptions from section 27(c)(1), and Rules 6e-2(b)(13)(iv) and (b)(13)(v) afford exemptions from section 27(d), to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. However, the exemptions afforded by Rules 6e-2(b)(12), (b)(13)(iv), and (b)(13)(v) may not contemplate a contingent deferred sales charge. Moreover, the insureds' deduction of the CDSC may be viewed as reducing the proceeds that the Policy owner would receive on surrender below the Policy owner's proportionate share of the Variable Account's current net assets. Applicants request an exemption from the foregoing provisions to the extent necessary to permit part of the Policy's sales charge to be deducted from premium

* Section 2(a)(32) offers the following definition of "redeemable security": "Any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled . . . to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof."

payments, and part to be deducted as a CDSC.

6. Applicants represent that Rule 6e-2 was adopted at a time when less flexibility regarding premium payments and other policy features was offered than subsequently has been permitted. Because of these features, particularly premium flexibility, less than the full amount of required premiums may be paid on or before the relevant due dates. It is unclear how the technical sales load computation provisions in Rule 6e-2 apply under such circumstances, particularly with respect to a contingent deferred sales charge.

7. Applicants submit that the CDSC is similar to the "redemption" charge authorized in section 10(d)(4) of the 1940 Act, and that Congress obviously intended that such a redemption charge, which is expressly described as a "discount from net asset value," be deemed consistent with the concept of "proportionate share" under section 2(a)(32).

8. Applicants submit that there will be no restriction on, or impediment to, surrender that should cause the Policy to be considered other than a redeemable security within the meaning of the 1940 Act and the rules thereunder. The Policy provides for full or partial surrender and withdrawals of excess value. The prospectus for the Policy will disclose the contingent deferred nature of part of the sales charge. Upon surrender or lapse, a Policy owner will receive his or her "proportionate share" of the Variable Account—i.e., the amount of net premiums paid, reduced by the amount of all charges and increased by the amount of all return credited to the Policy.

9. Rule 22c-1, adopted pursuant to section 22(c), prohibits Applicants from redeeming a Policy except at a price based on the current net asset value of the Policy that is next computed after receipt of the request for full or partial surrender of the Policy. Rule 6e-2(b)(12) affords exemptions from Rule 22c-1. Rules 22c-1 and 6e-2(b)(12), read together, impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated. Each insurer's CDSC may be deemed inconsistent with section 22(c) and Rule 22c-1 to the extent that the sales charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after full or partial surrender of the Policy.

10. Applicants submit that the CDSC will not have the dilutive effect which Rule 22c-1 is designed to prohibit

because a surrendering Policy owner would "receive" no more than an amount equal to the cash surrender value determined pursuant to the formula set out in his Policy and after receipt of his request. Furthermore, variable life insurance policies, by nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c-1 was aimed against, and, even if they could be so used, the CDSC would discharge, rather than encourage, any such trading.

11. Applicants submit that deduction of part of the sales charge as a deferred charge on surrender or lapse will be more favorable to Policy owners than deduction of the same amount of charge from premiums. First, the amount of the Policy owner's premium payment that will be allocated to the Variable Account, and be available to earn a return for the Policy owner, will be greater than it would be if the sales charge were deducted from premiums. Second, the total dollar amount of sales load under a Policy is no higher than that permitted by Rule 6e-2(b)(13) for a conventional scheduled premium variable life insurance policy; for a Policy owner who does not lapse or surrender in the early Policy years, the dollar amount of sales load is lower than would be permitted if taken entirely as front-end deductions from a Policy's premium payments. Third, the cost of insurance charge imposed will be less than it otherwise would be if the same amount of sales charge were deducted from premium payments, because the allocation of a greater amount of the Policy owner's premium to the Variable Account reduces the amount at risk (i.e., the amount of death benefit less the account value) upon which the cost of insurance charge is based. Moreover, Applicants represent that the insurers' sales load structures provide equitable treatment to both surrendering and persisting Policy owners.

12. The CDSC, although imposed on other than the premium, will cover expenses associated with the offer and sale of the Policy, just as other forms of sales loads do. Applicants submit that the mere fact that the timing of the imposition of the CDSC may not fall neatly within the literal pattern of all provisions discussed briefly above, does not change its essential nature as a sales charge. Moreover, Applicants represent that proposed amendments to Rule 6e-2 would permit assessment of a sales charge on a contingent deferred basis, and that such charges also are authorized by Rule 6e-3(T) for insurance policies able to rely on that Rule.

13. Applicants represent that the insurers' respective percentages of sales load will never exceed the sum of 30% of the premium payments paid for the first Policy year plus 10% of premium payments paid for the second Policy year, and will not exceed 9% of premium payments expected to be paid over the lesser of 20 years or the expected lifetime of the insured. For this reason, Applicants submit that the Policy is consistent with the principles and policies underlying the sales load limitations in section 27(a)(2), Rule 6e-2 (b)(13)(i) and (b)(13)(v).

14. Applicants submit that premium and other flexibility options under the Policy are a potential benefit to Policy owners.

C. Request for Exemptions Relating To Collection of Administrative Surrender Charge

1. Applicants' deduction of the administrative surrender charge pursuant to the Policies may be deemed to violate sections 2(a)(32), 22(c), 27(c)(1), 27(d), and Rule 22c-1 for essentially the same reasons as the CDSC might be deemed to violate those 1940 Act provisions and rules. Applicants request exemptions from the foregoing provisions to the extent necessary to permit the deduction of the administrative surrender charge upon early surrender or lapse of a Policy.

2. Applicants submit that imposition of the administrative surrender charge is more favorable to Policy owners than a charge deducted entirely from premiums or from account value over the life of the Policy. The reduction of the owner's investment in the Variable Account is less than it would be were this charge taken in full in the first Policy year. This results in a larger account value initially earning a return for the Policy owner. For a Policy owner who does not lapse or surrender in the early Policy years, the total dollar amount of the charges for issuance and maintenance expenses is lower than the insurers would be permitted to deduct from premium payments or by way of periodic deductions from a Policy's account value. As to all Policy owners, the total dollar amount of the administrative surrender charge will be no higher than the insurers would be permitted to deduct if this charge were in the form of a deduction from premium payments and/or from account value prior to a Policy's lapse or surrender.

3. Applicants represent that this charge has not been increased to take account of the time value of money (i.e., the insurers' respective investment costs attributable to deferment of the charge)

or the fact that not all Policy owners would incur the charge.

4. Neither insurer anticipates making a profit on the administrative surrender charge.

5. Administrative charges deducted in the form of a surrender charge are specifically permitted by Rule 6e-3(T) for variable life insurance policies offered and sold in reliance on that rule. Applicants submit that their requested relief with respect to the administrative surrender charge under the Policies is equally appropriate.

D. Request for Exemptions Relating To Deduction of Insurance Charges From Account Value

1. Sections 26(a)(2) and 27(c)(2) of the 1940 Act may be construed to prohibit the insurers from deducting certain insurance charges from the account value.⁷ Applicants request exemptions from the foregoing sections and Rule 6e-2(b)(13)(iii)⁸ to the extent necessary to permit deduction of certain insurance charges from account value, as described herein.

2. Applicants submit that deduction of cost of insurance charges from account value is fair and reasonable, and in accordance with the practice of most other variable life insurance policies. Applicants further submit that deduction of a portion of the charges for substandard risks and incidental insurance benefits from account value is also reasonable and appropriate. If all such charges were required to be deducted solely from premiums, it would be necessary for the insurers to (a) reduce the premium flexibility under the Policy and/or (b) further limit the classes of insureds for whom the Policy will be available and limit or eliminate the kinds of rider benefits the insurers intend to make available.

3. Applicants submit that their methods of deducting insurance charges is not designed to yield more revenues than if these charges were assessed solely against premiums.

4. Applicants submit that Rule 6e-3(T) authorizes deductions from account value for all of these insurance charges in connection with policies eligible to

⁷ The insurers seek to deduct the following insurance charges from account value: cost of insurance charges; charges assessed for incidental insurance benefits or for substandard risk classifications; the charge deducted for the risk of guaranteeing the guaranteed death benefit; and the charges imposed for assuming the risk of the additional death benefit guarantees associated with certain required premium reductions as a result of premium recalculations.

⁸ In pertinent part, Rule 6e-2(b)(13)(iii) provides an exemption from sections 26(a)(2)(C) and 27(c)(2), subject to certain conditions which Applicants represent that they satisfy.

rely on that rule, and that proposed amendments to Rule 6e-2 would authorize deductions from account value of this risk charges for guaranteed benefits.

5. Applicants submit that each insurer's method of deducting cost of insurance charges is fair and reasonable, and consistent with general industry practice.

6. Applicants submit that charges for substandard risks and incidental insurance benefits must be deducted from account value, as a practical matter.

7. Each insurer assesses two death benefit guarantee risk charges. These charges compensate each insurer for the risk it assumes in guaranteeing death benefits under the Policy, including the risk that the account value will not be sufficient to support the guarantees. Because of the Policy owner's flexibility with respect to the payment of premiums, the insurer's method of assessing the risk charges for the death benefit guarantees permits each Policy owner to pay charges more commensurate with the risks under his or her own Policy. Applicants submit that it is more appropriate and suitable to deduct those charges from the account value than from premiums, as deducting the charges from premiums would require Policy owners who pay more premiums to subsidize the guarantee risks assumed under the Policies of Policy owners who pay fewer premiums.

8. Each insurer represents that the level of the death benefit guarantee risk charges is reasonable in relation to the risks assumed by each insurer under the Policy. The methodology used to support this representation is an analysis of each insurer's mortality risks, taking into account such factors as each insurer's contractual right to increase insurance charges above current levels, the level of risk inherent in the various insurance benefits provided by the Policy and the possibility of "anti-selection" risks resulting from Policy owners' exercise of the various flexibility features under the Policy, all based on each insurer's experience with other insurance products. Each insurer undertakes to keep and make available to the Commission on request the documents or memoranda used to support this representation.

9. Each insurer further represents that there is a reasonable likelihood that the distribution financing arrangement of each Variable Account will benefit the Variable Account and Policy owners. Each insurer will keep and make available to the Commission on request

a memorandum setting forth the basis of this representation.

10. Applicants agree that if the requested order is granted, such order will be expressly conditioned on Applicants' compliance with the following: Each Variable Account will invest only in management investment companies which have undertaken, in the event they should adopt any plan under Rule 12b-1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve such plan.

E. Request for Exemptions Relating to Use of 1980 CSO Tables

1. Rule 6e-2(b)(1) makes the definition of "sales load" in Rule 6e-2(c)(4) applicable to the Policy. Section 27(a)(1) of the 1940 Act prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e-2(b)(13)(i) provides an exemption from section 27(a)(1) to the extent that "sales load," as defined Rule 6e-2(c)(4), does not exceed 9% of the payments to be made on the variable life insurance policy during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Table.

2. Rule 6e-2(c)(4), in defining "sales load," contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Tables and the assumed investment return specified in the Policy. Following the adoption of Rule 6e-2, the National Association of Insurance Commissioners adopted the 1980 CSO Tables. The guaranteed cost of insurance rates under each insurer's Policy are based on the 1980 CSO Tables. Applicants request exemptions from section 27(a)(1) and Rules 6e-2(b)(1), (b)(13)(i), and (c)(4) to the extent necessary to permit cost of insurance to be calculated for purposes of testing compliance with the rule based on the 1980 CSO Tables.

3. Applicants represent that proposed amendment to Rule 6e-2 would permit use of either the 1958 or the 1980 CSO Tables for purposes of Rule 6e-2(b)(13)(i) and (c)(4), depending on which relates to the insurance rates guaranteed under an insurance policy.⁹

4. Applicants represent that state insurance laws require that each insurer use 1980 CSO Tables in establishing premium rates and determining reserve liabilities for the Policy.

⁹In addition, Applicants note that Rule 6e-3(T) requires that the 1980 CSO Tables be used for all policies offered in reliance on that Rule.

5. Applicants further represent that cost of insurance charges based on the 1980 CSO Tables generally are lowered than those based on the 1958 CSO Tables, and that, for the most part, this results in lower charges and higher Policy values than if the charges are based upon the 1958 CSO Tables. Furthermore, Applicants assert that the mortality rates reflected in the 1980 CSO Tables more nearly approach the mortality experience which they expect under the Policy.

F. Request for Exemptions Relating to "Stair-Step" Requirements

1. Section 27(a)(3) of the 1940 Act generally provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment and that the amount deducted from any subsequent payment cannot exceed proportionately the amount deducted from any other subsequent payment.

2. Rule 6e-2(b)(13)(ii) grants an exemption from section 27(a)(3), provided that the proportionate amount of sales load deducted from any payment during the contract period shall not exceed the proportionate amount deducted from any prior payment, unless the increase is caused by the grading of cash values into reserves or reductions in the annual cost of insurance.

3. Applicants represent that section 27(a)(3) of the 1940 Act and Rule 6e-2(b)(13)(ii)—commonly referred to as the "stair-step" provisions—may be deemed inconsistent with deduction of a deferred sales charge. Moreover, Rule 6e-2 was adopted at a time when less flexibility regarding premium payments and other policy features was offered than has been permitted subsequently. Because of these "flexibility features," particularly premium flexibility, more or less than the full amount of the required premiums may be paid on or before the relevant due dates. For these reasons, Applicants request an exemption from section 27(a)(3) and Rule 6e-2(b)(13)(ii) to the extent necessary to permit deduction of the front-end sales charge as part of the premium expense charge, and deduction of the CDSC on surrender or lapse of a Policy or partial surrender of the basic death benefit.

4. Applicants do not believe that either section 27(a)(3) or Rule 6e-2(b)(13)(ii) apply to deferred sales loads. In this regard, Applicants assert that both the statutory provision and the rule apply by their terms only to "amounts deducted from payments," and a

deferred sales load is not deducted from payments.

5. Applicants note that proposed amendments to Rule 6e-2 would modify the stair-step provisions to make them applicable to sales loads deducted other than from payments. Applicants assert that if a modification is necessary to apply these provisions to a deferred sales load, then without such modification the provisions should not apply.

6. Applicants represent that the CDSC (if calculated as a percentage of based policy premiums due to date) never increases from year to year; the total increase annually by 15% of one year's based policy premium in the early years and is reduced in later years. In no case is the percentage increase in the CDSC (if calculated as a percentage of one year's base policy premium) for any year greater than that for the previous year.

7. In addition, Applicants represent that each insurer will waive a portion of any sales charge otherwise deducted from premiums paid on a Policy with a guaranteed death benefit of at least \$250,000. The continuation of this waiver is not contractually guaranteed, however, and the waiver may be withdrawn or modified by each insurer at any time. Because the waiver of the front-end sales charge applies only when the guaranteed death benefit is at least \$250,000, it is possible that the waiver could apply at some times with respect to a given Policy and not at a subsequent time with respect to the same Policy. Because section 27(a)(3) and Rule 6e-2(b)(13)(ii) appear to prohibit this condition, Applicants request an exemption from those provisions to the extent necessary to permit them to waive the sales charge deducted from premiums under the circumstances described herein.

8. The insurers will not impose the 5% front-end sales charge upon the amount of any premium payments received in any Policy year that are in excess of the annual required premium for the year ("Excess Premiums"). Accordingly, the front-end sales charge may apply to some premium payments and not to others. Because section 27(a)(3) and Rule 6e-2(b)(13)(ii) appear to prohibit this, Applicants request an exemption from those provisions to the extent necessary to omit deducting any sales charge from Excess Premiums.

9. The insurers have designed the Policies so that they are "refund proof"—i.e., they never will require the repayment of any sales charges pursuant to Rule 6e-2(b)(13)(v)(A). The Policies would remain refund proof, and (subject to the exemptive relief requested in the application) would continue to comply

with all of the other sales charge limitations and requirements in Rule 6e-2, even if the front-end sales charge were deducted from all premium payments. This front-end charge structure, however, also would be less favorable to Policy owners than that provided under the Policies.

10. The higher sales charge on the first required premium paid under a Policy in any Policy year, as compared with that imposed on Excess Premiums, in part reflects the fact that the insurers will incur lower overall distribution costs (e.g., commissions paid to sales persons) in connection with Excess Premiums over the life of the Policies. To impose the full 5% sales charge on Excess Premiums would generate more revenue than the insurers believe is necessary to adequately defray such expenses. Thus, Applicants' design provides a significant benefit to Policy owners by passing through to them a portion of the insurers' lower distribution costs with respect to Excess Premiums. Applicants submit that it would not be in the interest of Policy owners to require the imposition of a sales charge on Excess Premiums that is higher than Applicants deem necessary.

11. Applicants represent that the prospectus for the Policies will contain disclosure informing Policy owners how to minimize sales charge deductions from premiums paid.

12. Applicants assert that the stair-step requirements are designed to discourage unduly complicated sales load structures. Applicants submit that the sales charge design of the Policy is not unduly complicated and will be fully disclosed in the prospectus pertaining to the Policy.

13. Applicants submit that sales charges are not designed to generate more revenues from later payments than from earlier payments.

14. Applicants represent that the precise amount of sales load assessed depends on, among other things, the degree to which a Policy owner exercises the premium and other flexibility features of the Policy. The exercise of these features is within the sole control of the Policy owner. Applicants note that in amending Rule 6e-3(T), the Commission specifically indicated that sales charge policies underlying the stair-step requirement are not contravened by fluctuations in sales load which result from factors beyond the issuer's control. Applicants submit that this principle should be equally applicable in the present context.

G. Request for Exemptions Relating To Custodianship Arrangements

1. In pertinent part, sections 26(a)(1) and (a)(2) of the 1940 Act prohibit Applicants from selling the Policy unless it is issued pursuant to a trust indenture or other such instrument that designates one or more trustees or custodians, qualified as specified, to have possession of all securities in which each insurer and the applicable Variable Account invest.

2. In pertinent part, section 27(c)(2) of the 1940 Act may be read to prohibit Applicants from selling the Policy unless the proceeds of all purchase payments are deposited with a trustee or custodian as specified.

3. Rule 6e-2(b)(13)(iii) under the 1940 Act affords an exemption from sections 26(a)(1), 26(a)(2), and 27(c)(2), provided that each insurer complies, to the extent applicable, with all other provisions of section 26 as if it were a trustee or custodian for the Variable Account, and assuming that each insurer meets the other requirements set forth in the rule.

4. Applicants represent that the holding of Fund shares by each insurer and each Variable Account under an open account arrangement, without having possession of share certificates and without a trust indenture or other such instrument, may be deemed inconsistent with the foregoing provisions. Accordingly, Applicants request exemptions from those provisions, to the extent necessary.

5. Applicants represent that current industry practice calls for unit investment trust separate accounts, such as the Variable Accounts, to hold shares of management investment companies in uncertificated form. Applicants further represent that holding shares of underlying management investment companies in uncertificated form contributes to efficiency in the purchase and sale of such shares by separate accounts and generally saves costs.

6. Applicants note that, in contrast to the Policy (which is covered by Rule 6e-2), policies covered by Rule 6e-3(T) may rely on Rules 6e-3(T)(b)(13)(iii) (B) and (C) which, in effect, afford the exemptions requested here by the Applicants. The Commission has proposed amendments to Rule 6e-2(b)(13)(iii) to permit life insurers (such as the insurers) to hold the assets of a separate account without a trust indenture or other such instrument, and to permit a separate account organized as a unit investment trust (such as the Variable Accounts) to hold the securities of any registered investment company (such as the Fund) that offers its shares to the separate account in

uncertificated form. Applicants also note that the Commission has adopted Rule 26a-2 which affords exemptions in connection with variable annuity separate accounts that are essentially similar to those requested here.

Accordingly, Applicants presume that the Commission adopted or proposed the foregoing exemptive rules based on a determination that, where state insurance law protects separate account assets and open account arrangements foster administrative efficiency and cost savings, safekeeping of separate account assets does not necessarily depend on the presence of a trustee, custodian or trust indenture, or the issuance of share certificates.

7. Each insurer represents that: it will comply with all other applicable provisions of section 26 as if it were a trustee or custodian for its Variable Account (subject to the other exemptive relief requested in the application); it will file with the insurance regulatory authority of Massachusetts an annual statement of its financial condition in the form prescribed by the National Association of Insurance

Commissioners—the most recent such statement indicated that each insurer has a combined capital and surplus of at least \$1,000,000; it is examined from time to time by the insurance regulatory authority of Massachusetts as to its financial condition and other affairs; and it is subject to supervision and inspection with respect to its separate account operations.

H. Request for Exemption Relating To "Free Look" Right

1. Section 27(f) of the 1940 Act provides that periodic payment plan certificate holders may, within a specified time period, surrender their certificates and receive the account value plus all deductions from gross purchase payments; Rule 27f-1 provides for notices in connection therewith.

2. Rule 6e-2(b)(13)(viii) provides an exemption from section 27(f) and Rule 27f-1, provided that the Policy owner has the right to:

(i) Return the Policy no later than 45 days after execution of the application for the Policy or, if later, within 10 days after receipt of the Policy or the notice of right of withdrawal by the owner; and

(ii) Receive a refund of all payments made thereunder.

3. Each insurer intends generally to comply with Rule 6e-2(b)(13)(viii), but anticipates that under the laws of some states, it may now or in the future be required to credit investment losses and gains during the "free look" period to Policy owners who exercise their "free look" right.

4. Applicants assert that section 27(f) presumes that the security owner will bear any investment gains and losses during the "free look" period, and that Rule 6e-3(T)(b)(13)(viii) would permit each insurer's proposed "free look" procedures for a policy relying on that Rule. Applicants also note that no state laws required return of account value pursuant to "free look" procedures at the time Rule 6e-2 was adopted, and that under the policy designs prevalent at time, the amount of investment depreciation or appreciation during the "free look" period was not likely to be great because premiums in excess of scheduled premiums were not permitted to be paid, and relatively large front-end charges reduced the amount initially allocated to the separate account. For these reasons, and because no state laws required "free look" right procedures when Rule 6e-2 was adopted, Applicants do not regard as particularly significant the failure of Rule 6e-2(b)(13)(viii) to authorize such "free look" procedures.

5. Applicants request an exemption from section 27(f) and Rules 27f-1 and 6e-2(b)(13)(viii) to the extent necessary to permit the "free look" procedures the insurers have prescribed for the Policies.

Conclusion

Applicants assert that, for the reasons set forth above, the requested exemptions from (i) those provisions of the 1940 Act and those rules specified in paragraph (b) of Rule 6e-2 thereunder, other than sections 7 and 8(a), as well as (ii) sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f), and Rules 63-2 (b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(viii), (c)(1) and (c)(4), 22c-1, and 27f-1, meet the standards of section 6(c) of the 1940 Act. The requested exemptions 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 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94-11034 Filed 5-6-94; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Sierra Health Services, Inc., Common Stock, \$0.005 Par Value) File No. 1-8865

May 3, 1994.

Sierra Health Services, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on April 26, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before May 24, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 94-11078 Filed 5-6-94; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Westamerica Bancorporation, Common Stock, No Par Value) File No. 1-9383

May 3, 1994.

Westamerica Bancorporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on March 24, 1994, to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(4) The Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before May 24, 1994, submit by letter to

the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-11076 Filed 5-6-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1999]

Advisory Committee on International Law; Renewal

The Department of State has renewed the Charter of the Advisory Committee on International Law. This advisory committee will continue to obtain the views and advice of a cross-section of the country's outstanding members of the legal profession on significant issues of international law. The committee's consideration of legal issues in the conduct of our foreign affairs provides a unique contribution to the creation and promotion of U.S. foreign policy. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

The committee consists of former Legal Advisers of the Department of State and not more than twenty individuals appointed by the Legal Adviser of the Department of State. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with section 10(d) of the FACA, 5 U.S.C. 552(c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the *Federal Register* at least 15 days prior to the meeting date.

For further information, please call: Bruce C. Rashkow, Assistant Legal Adviser for United Nations Affairs, (202) 647-6771.

Dated: April 18, 1994.

Conrad K. Harper,

The Legal Adviser.

[FR Doc. 94-11115 Filed 5-6-94; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice 1998]

United States International Telecommunications Advisory Committee, Radiocommunication Sector Task Group 1/4; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Task Group 1/4, will meet on June 3, 1994, 1 p.m. to 4 p.m. in room 1605 at the U.S. Department of Commerce, Main Commerce Building, 14th St. and Pennsylvania Ave., NW., Washington, DC.

In November 1993, the International Telecommunication Union's (ITU) Radiocommunication Assembly adopted a resolution " * * * to develop guidance for an informal exchange of information through electronic means to share spectrum management information". In Decision ITU-R 2/1, Study Group 1 decided to (i) establish Task Group 1/4; and (ii) designate Norbert Schroeder (USA/NTIA) as the Chairman. The work of Task Group 1/4 includes:

- (i) An exchange of experiences in the development and implementation of existing electronic document exchange systems; and
- (ii) The development of guidance for an informal exchange of information through electronic means to share spectrum management information.

This initial meeting of U.S. Task Group 1/4 will begin preparations for the international meeting scheduled for August 16-18, 1994. The issues mentioned above will be addressed as they apply to the United States.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the Acting U.S. Representative Mr. Norbert Schroeder. Anyone planning to attend the meeting is requested to contact Mr. Schroeder no later than 5 days before the meeting, (i) by phone, 202 482-3999; (ii) by fax on 202 482-4396; (iii) on the NTIA bulletin board (dial in 202 482-1199 or Internet/telnet: ntiabbs.ntia.doc.gov); or (iv) Internet E-Mail (nschroeder@ntia.doc.gov).

Dated: April 21, 1994.
 Warren G. Richards,
 Chairman, U.S. ITAC for ITU
 Radiocommunication Sector.
 [FR Doc. 94-11116 Filed 5-6-94; 8:45 am]
 BILLING CODE 4710-45-M

TRADE AND DEVELOPMENT AGENCY

Public Information Collection Requirements Submitted To Office of Management and Budget for Review

AGENCY: Trade and Development
 Agency.

ACTION: Notice.

SUMMARY: The U.S. Trade and Development Agency (TDA) has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, as amended, (44 U.S.C. chapter 35, section 3507).

FOR FURTHER INFORMATION CONTACT:
 David Denny, Trade and Development
 Agency, State Annex 16 room 309,
 Washington, DC 20523-1602, Tel. (703)
 875-4142.

Copies of these submissions may be obtained from TDA's Information Officer, Carol Stillwell, SA-16, room 309, Washington, DC 20523-1602, Tel. (703) 875-4357.

Persons wishing to comment on these collections of information with suggestions for ways to reduce the burdens should also contact Jefferson Hill, room 3208, NEOB, Washington, DC 20503, Tel. (202) 395-7340.

Title: Evaluation of TDA World Bank Trust Fund Projects.

Action: New Request for OMB Approval.

Respondents: U.S. private consultants and World Bank officials.

Frequency of Response: One time only.

Estimated Annual Burden: 60 Respondents. One hour burden for 20 World Bank officials; One-half hour burden for 40 U.S. private sector officials; Total Annual Burden of 40 hours.

Needs and Uses: TDA is undertaking an evaluation of three funds that it has established at the World Bank. The funds are used by World Bank officials to hire U.S. citizens to assess potential projects. TDA has selected a contractor to survey World Bank loan officers and the U.S. consultants that were involved in TDA supported projects. The information gathered will help TDA develop guidelines and plans for similar future activities. The contractor and TDA estimate that there are 60

individuals (40 U.S. private consultants and 20 World Bank officials) who were involved in these activities.

Lisa DeSoto,
 General Counsel.
 [FR Doc. 94-11090 Filed 5-6-94; 8:45 am]
 BILLING CODE 8040-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 94-10; Notice 2]

AC Cars Ltd; Grant of Petition for Temporary Exemption From Standard No. 208

AC Cars Ltd. of Weybridge, Surrey, England, petitioned for a temporary exemption until November 1, 1996, for its Ace model, from the automatic protection requirements of Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection. The basis of the petition was that compliance would cause substantial economic hardship.

Notice of receipt of the petition was published on February 2, 1994, and an opportunity afforded for comment (59 FR 4964). This notice grants the petition.

Petitioner's Hardship Arguments

Under 15 U.S.C. 1410(a)(1)(A), the Administrator may provide a temporary exemption upon a finding that "compliance would cause substantial economic hardship and that the manufacturer has, in good faith, attempted to comply * * *."

The following is a summary of AC's petition. The company is privately owned and produced no motor vehicles during the 12 months preceding the filing of its petition. The first prototype of the Ace was shown in 1986. Since then, the company has spent much time redesigning it "to meet the increasingly higher standards of emissions and safety * * * with the original intentions of achieving first sales into North America." As of the date of the petition, the petitioner has spent approximately 5,000,000 Pounds Sterling on the project, 100,000 of which (and 1,250 man hours) have been spent in the two years preceding the filing of the petition in research and development relating to meeting the automatic restraint requirements of Standard No. 208. Because the Ace is a full convertible, the company found that it could not adopt an automatic seat belt system. Additional design changes, development and actual testing are necessary in order to install in the Ace

an airbag system that meets Standard No. 208. Being a small manufacturer of motor vehicles, the petitioner has had to rely on the expertise of outside parties in the design and development of necessary components.

AC concluded that modifications of the following will be required to accommodate driver and passenger side airbag systems: interior dash and cockpit components, seats, steering wheel and chassis. The estimated cost of these modifications is 750,000 Pounds Sterling, exclusive of testing costs. The company's balance sheet shows that its cumulative losses, which were approximately 1,500,000 Pounds Sterling as of December 31, 1989, increased to approximately 4,275,000 Pounds Sterling as of September 30, 1993.

The company anticipates that it will be able to conform by November 1, 1996. It projects total sales of 200 units in 1994 and 350 in 1995, half of which are proposed for North American sales.

Arguments Why an Exemption Would be in the Public Interest and Consistent With Traffic Safety Objectives

In order to grant an exemption, the Administrator must also find that the exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act (the Act). In support of its petition, AC informed NHTSA that the Ace will be equipped with a three-point restraint system that conforms to Standard No. 208, "the mountings of which have been tested in accordance with and achieved FMV210 (sic) US standard approval." Further, except for the automatic restraint requirements, the Ace has been designed to meet all other Federal motor vehicle safety standards, and the bumper standard. It will be manufactured "using the following US sourced components: Ford engine, transmission, exhaust, wiring and associated components." According to the petitioner, "US parts sourcing and dealer network labor involvement is also in the best interest of the US economy."

No comments were received on the petition.

The agency is cognizant of the history of AC Cars Ltd., a manufacturer of ancient lineage whose production during the 70 years or so of its existence has been minimal, and, in the past decade, sporadic. The Ace is a refinement of a 1986 prototype which had not entered production as of the time that the company filed its petition. In spite of its cumulative net losses, AC has been able to engineer a passenger car that it avers is in compliance with

all Federal motor vehicle safety and bumper standards with the exception of the standard for which it seeks temporary exemption. With respect to Standard No. 208, NHTSA is aware of the problems that small manufacturers have in interesting outside concerns to engineer and supply automatic restraint systems for unique vehicles of very limited production. AC appears to have determined the areas of its product that must be revised in order to conform to Standard No. 208, and to have established a schedule for achieving compliance. The Ace will be equipped with a three-point restraint system in each of its two designated seating positions. The decision to engineer for airbags appears particularly appropriate given the mandate that all cars be equipped with driver and passenger airbags and given the extra expense that would result from designing first for automatic belts and then for air bags. The car will utilize a US-manufactured drive train and other components.

Accordingly, it is hereby found that to require compliance would cause the petitioner substantial economic hardship and that the petitioner has made a good faith effort to comply with the standard for which exemption is requested. It is further found that a temporary exemption would be in the public interest and consistent with the objectives of the Act. AC Cars Ltd. is granted NHTSA Temporary Exemption 94-3, expiring November 1, 1996, from S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 Occupant Crash Protection.

Authority: 15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.

Issued on: May 3, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94-11008 Filed 5-6-94; 8:45 am]

BILLING CODE 4910-59-P-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

May 2, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1251.

Regulation ID Number: PS-005-91

Final.

Type of Review: Extension.

Title: Limitations on Percentage

Depletion in the Case of Oil and Gas Wells.

Description: Section 1.613A-3(e)(6)(i) of the regulations requires each partner to separately keep records of the partner's share of the adjusted basis of partnership oil and gas property.

Respondents: Businesses or other for-profit.

Estimated Number of Recordkeepers: 1,500,000.

Estimated Burden Hours Per

Recordkeeper: 2 minutes.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 49,950 hours.

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94-11091 Filed 5-6-94; 8:45 am]

BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review

May 2, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0675.

Form Number: IRS Form 1040EZ.

Type of Review: Revision.

Title: Income Tax Return for Single and Joint Filers With No Dependents.

Description: This form is used by certain individuals to report their income subject to income tax and to figure their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistical use.

Respondents: Individuals or households.

Estimated Number of Respondents/

Recordkeepers: 21,755,603.

Estimated Burden Hours Per

Respondent/Recordkeeper:

Recordkeeping—5 minutes

Learning about the law or the form—44 minutes

Preparing the form—1 hour, 19 minutes

Copying, assembling and sending the form to the IRS—1 hour, 15 minutes

Frequency of Response: Annually.

Estimated Total Reporting/

Recordkeeping Burden: 38,058,821 hours.

OMB Number: 1545-1045.

Form Number: None.

Type of Review: Reinstatement.

Title: Conducting 1994 Focus Group Interviews on Federal Tax Forms.

Description: Focus group interviews are necessary to obtain public input on a revised tax form. The results will be used to further simplify and improve the form so that taxpayers will understand it more easily.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Respondent:

Screening time—100 hours

Focus group session—180 hours

Frequency of Response: Other (one-time focus group review).

Estimated Total Reporting Burden: 280 hours.

OMB Number: 1545-1058.

Form Number: IRS Form 8655.

Type of Review: Revision.

Title: Report Agent Authorization.

Description: Form 8655 allows a taxpayer to designate a reporting agent to file certain employment tax returns on magnetic tape, and to submit Federal tax deposits. This form allows IRS to disclose tax account information and to provide duplicate copies of taxpayer correspondence to authorized reporting agents. Reporting agents are persons or organizations preparing and filing magnetic tape equivalents of Federal tax returns and/or submitting Federal tax deposits.

Respondents: Businesses or other for-profit, Non-profit institutions, Small business or organizations.

Estimated Number of Respondents:
100,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden:
10,000 hours

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.
[FR Doc. 94-11092 Filed 5-6-94; 8:45 am]

BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review

May 2, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0097.

Form Number: None.

Type of Review: Extension.

Title: Customs Regulations Relating to Copyrights.

Description: Copyrights owners who choose to record a copyright with Customs for import protection must establish validity of the copyright, pay an administration fee, and provide samples and other information to aid Customs officers in identifying pirated copies.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents:
600.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden:
600 hours.

OMB Number: 1515-0174.

Form Number: None.

Type of Review: Extension.

Title: Electronic Entry Filing.

Description: This information collection permits qualified brokers, importers and service bureaus to file electronically through Automated Broker Interface (ABI) immediate deliver/entry and entry summary data.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 4 hours, 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/

Recordkeeping Burden: 9,576 hours.

Clearance Officer: Ralph Meyer (202) 927-1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94-11093 Filed 5-6-94; 8:45 am]

BILLING CODE 4820-02-P

Public Information Collection Requirements Submitted to OMB for Review

May 2, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535-0085.

Form Number: PD F 5261.

Type of Review: Extension.

Title: Treasury Note or Bond Reinvestment Request.

Description: This form is used by owner, to have redemption proceeds of a security reinvested at maturity in a new security in the same form registration.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents:
150,000.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden:
15,000 hours.

Clearance Officer: Vicki S. Ott (304) 480-6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106-1328.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94-11094 Filed 5-6-94; 8:45 am]

BILLING CODE 4810-40-P

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the Federal Register of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA) Performance Review Boards which was published in the Federal Register on October 22, 1993, (58 FR 203).

FOR FURTHER INFORMATION CONTACT: Carol A. Kummer, Office of Human Resources Management (053), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273-4937.

VA Performance Review Board (PRB)

Eugene A. Brickhouse, Assistant Secretary for Human Resources and Administration (Chairperson)
Shirley Carozza, Deputy Assistant Secretary for Budget
Harold F. Gracey, Jr., Chief of Staff, Office of the Secretary
C. Wayne Hawkins, Deputy Under Secretary for Health for Administration and Operations
Gerald K. Hinch, Deputy Assistant Secretary for Equal Opportunity
Mary Lou Kenner, General Counsel
William T. Merriman, Deputy Inspector General
Roger R. Rapp, Director of Field Operations, National Cemetery System
John Vogel, Under Secretary for Benefits

Veterans Benefits Administration PRB

David A. Brigham, Director, Veterans Assistance Service (Chairperson)

Raymond H. Avent, Director, Eastern Area
J. Gary Hickman, Director, Compensation and Pension Service
Rhoda R. Mancher, Director, Office of Information Technology
Richard Pell, Jr., Deputy Chief of Staff, Office of the Secretary
David M. Walls, Director, Western Area

Veterans Health Administration PRB

John T. Farrar, M.D., Deputy Under Secretary for Health (Chairperson)
C. Wayne Hawkins, Deputy Under Secretary for Health for Administration and Operations (Co-Chairperson)
Bernice P. Dorse, R.D., Director, Dietetic Service
Barbara L. Gallagher, Regional Director, Eastern Region

Sanford M. Garfunkel, Associate Chief Medical Director (CMD) for Operations
Harold F. Gracey, Jr., Chief of Staff, Office of the Secretary
David H. Law, M.D., Acting Associate Deputy CMD for Clinical Programs
Richard P. Miller, Regional Director, Southern Region
Alline L. Norman, Associate CMD for Administration
Elizabeth M. Short, M.D., Associate CMD for Academic Affairs
Dennis H. Smith, Chief of Staff for the Under Secretary for Health
Nancy M. Valentine, Ph.D., R.N., Assistant CMD for Nursing Programs
Charles V. Yarbrough, Associate CMD for Construction Management
Thomas T. Yoshikawa, M.D., Assistant CMD for Geriatrics and Extended Care

Albert Zamberlan, Regional Director, Central Region

Office of Inspector General PRB

Milton M. Macdonald, Deputy Assistant Inspector General for Audit, Department of State (Chairperson)
David A. Brinkman, Assistant Inspector General for Analysis and Follow-up, Department of Defense
Sebastian R. Lorigo, Deputy Inspector General for Investigations, Department of Housing and Urban Development

Dated: April 29, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94-11134 Filed 5-6-94; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 88

Monday, May 9, 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).

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL TELEPHONE BANK, USDA

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 9 a.m., Wednesday, May 18, 1994.

PLACE: Renoir Room, Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: The staff briefing will consist of matters relating to:

1. Panel discussion regarding privatization of the RTB. Guest speakers scheduled include representatives from the National Telephone Cooperative Association (NTCA); United States Telephone Association (USTA); Rural Telephone Finance Corporation (RTFC); Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO); National Telephone Association (NRTA); and CoBank.
2. Review of election procedures in connection with the upcoming Board of Directors election.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: 10 a.m., Thursday, May 19, 1994.

PLACE: Williamsburg Room, Administration Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Approving the Minutes of the February 10, 1994, Board meeting.
3. Report on loans approved in the second quarter of FY 1994.
4. Report on requests for waiver of prepayment premium.
5. Review of financial statements for the second quarter of FY 1994.
6. Report of ad hoc committee on privatization of the RTB.
7. Report of ad hoc committee on prepayments, if necessary.
8. Consideration of RTB's 22nd Annual Report of the Board of Directors for FY 1993.
9. Consideration of resolution establishing the date of, and also scheduling various

actions in connection with the upcoming Board of Directors election.

10. Consideration of resolution to appoint Tellers to tabulate election results.

11. Consideration of resolution to replace lost stock certificate.

12. Establish date and location of the next regular Board meeting.

13. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank (202) 720-0530.

Dated: May 5, 1994.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 94-11295 Filed 5-5-94; 4:15 pm]

BILLING CODE 3410-15-P

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 2:00 p.m., Wednesday, May 11, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Five Gallon Buckets

The staff will brief the Commission on issues related to the safety of five gallon buckets.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: May 4, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94-11303 Filed 5-5-94; 4:14 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, May 12, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Upholstered Furniture Petition FP 93-1

The Commission will consider options for Commission action on petition FP 93-1 from the National Association of State Fire Marshals requesting the development of a flammability standard for upholstered furniture.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: May 4, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94-11302 Filed 5-5-94; 4:14 pm]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: May 11, 1994, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, May 11, 1994 Meeting, Regular Meeting (10:00 a.m.)

CAH-1.

Project No. 2376-002, Appalachian Power Company

CAH-2.

Project No. 2547-044, City of Swanton Village, Vermont

CAH-3.

Omitted

CAH-4.

Project No. 10078-011, Carl and Elaine Hitchcock

CAH-5.

Project No. 10895-002, Michiana Hydro-Electric Power Corporation

CAH-6.

Project No. 11038-004, County of Arapahoe and Town of Parker, Colorado

CAH-7.

- Project Nos. 1835-094 and 103, Nebraska Public Power District
CAH-8.
Project No. 10900-003, Thomas Hodgson & Sons, Inc.
- CAH-9.
Project No. 8800-021, Western Hydro Electric, Inc.
- CAH-10.
Project No. 4017-041, Pittsburgh Water and Sewer Authority
- Consent Agenda—Electric**
- CAE-1.
Docket No. ER94-209-000, Kentucky Utilities Company
- CAE-2.
Docket No. ER94-1043-000, Virginia Electric and Power Company
- CAE-3.
Docket No. ER94-1045-000, Kansas City Power & Light Company
- CAE-4.
Docket No. QF93-129-001, Syracuse Power Company
- CAE-5.
Docket Nos. ER92-595-000 and ER92-596-000, Pacific Gas and Electric Company
Docket No. ER92-626-000, Southern California Edison Company, Pacific Gas and Electric Company and San Diego Gas & Electric Company
- CAE-6.
Docket No. ER94-1054-000, Carolina Power & Light Company
- CAE-7.
Docket No. ER94-1074-000, New England Power Company
- CAE-8.
Docket No. ER94-108-000, Heartland Energy Services, Inc.
- CAE-9.
Docket No. ER93-940-000, Boston Edison Company
- CAE-10.
Docket No. ER93-889-001, Citizens Utilities Company
- CAE-11.
Docket No. EL89-44-003, Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Company
- CAE-12.
Docket No. ER90-144-011, Northeast Utilities Service Company (Re: Public Service Company of New Hampshire)
- CAE-13.
Docket Nos. ER94-504-001 and ER94-505-001, Public Service Company of Colorado
- CAE-14.
Docket No. ER93-540-001, American Electric Power Service Corporation
- CAE-15.
Omitted
- CAE-16.
Docket Nos. EC92-21-004 and ER92-806-005, Entergy Services, Inc. and Gulf States Utilities Company
- CAE-17.
Docket Nos. EL94-36-000 and QF84-256-003, Oxbow Geothermal Corporation
- CAE-18.
Docket No. EG94-42-000, Sarnia Cogeneration Joint Ventures
- CAE-19.
Docket No. EG94-38-000, Meshelfco No. 162 Pty Ltd.
- CAE-20.
Docket No. EG94-37-000, Sei Holdings VII, Inc.
- CAE-21.
Docket No. EG94-39-000, Sunshine State Power (No. 2) B.V.
- CAE-22.
Docket No. EG94-41-000, Sunshine State Power B.V.
- CAE-23.
Docket Nos. EL94-1-000 and ER94-6-000, Intercoast Power Marketing Company
- CAE-24.
Docket No. EL94-39-000, City of Orangeburg, South Carolina v. South Carolina Electric & Gas Company
- CAE-25.
Docket No. EG94-40-000, NRG Gladstone Operating Services Pty Ltd.
- Consent Agenda—Oil and Gas**
- CAG-1.
Omitted
- CAG-2.
Docket No. RP94-136-003, Northwest Pipeline Corporation
- CAG-3.
Docket No. RP94-154-001, Northern Natural Gas Company
- CAG-4.
Docket No. RP93-70-000, Black Marlin Pipeline Company
- CAG-5.
Docket No. ST94-3914-000, Transok, Inc.
- CAG-6.
Docket No. CP90-1391-003, Arcadian Corporation v. Southern Natural Gas Company
- CAG-7.
Docket Nos. RP94-59-000, RP94-27-000 and RP94-46-001, Transcontinental Gas Pipe Line Corporation
- CAG-8.
Docket No. RP94-93-000, K N Interstate Gas Transmission Company
- CAG-9.
Docket No. RP94-180-000, Southern Natural Gas Company
- CAG-10.
Docket No. RP94-207-000, Alabama-Tennessee Natural Gas Company
- CAG-11.
Docket No. FA90-65-000, Northern Border Pipeline Company
- CAG-12.
Docket Nos. RP85-177-119, *et al.*, RP92-171-000, RP93-122-000, RP93-125-000, *et al.*, RP93-128-000, RP93-181-000, RP93-204-000, RP94-33-000, RP94-66-000, RP94-99-000, RP94-135-000, TM93-2-17-000 and TM94-2-17-000, Texas Eastern Transmission Corporation
- CAG-13.
Docket No. RP94-181-000, Overthrust Pipeline Company
- CAG-14.
Docket Nos. TA94-1-23-002, 000, 001 and TM94-2-23-000, Eastern Shore Natural Gas Company
- CAG-15.
Docket No. RP94-24-000, Pacific Gas Transmission Company
- CAG-16.
Docket No. RP91-166-000, Northwest Pipeline Corporation
- CAG-17.
Docket No. RP93-3-006, Arkla Energy Resources Company
- CAG-18.
Docket No. RP94-135-001, Texas Eastern Transmission Corporation
- CAG-19.
Docket No. RP94-150-001, ANR Pipeline Company
- CAG-20.
Docket No. RP94-67-007, Southern Natural Gas Company
- CAG-21.
Docket Nos. RP94-133-003 and RP94-67-006, Southern Natural Gas Company
- CAG-22.
Docket No. RP87-103-016, Panhandle Eastern Pipe Line Company
- CAG-23.
Docket No. RP91-203-038, Tennessee Gas Pipeline Company
- CAG-24.
Omitted
- CAG-25.
Docket Nos. RP89-224-010, RP89-203-007, RP90-139-012 and RP91-69-003, Southern Natural Gas Company
- CAG-26.
Docket No. RP92-134-008, Southern Natural Gas Company
- CAG-27.
Docket Nos. RP85-203-007 and RP88-203-006, Panhandle Eastern Pipe Line Company
Docket Nos. RP85-202-000 and 006, Trunkline Gas Company
Docket Nos. RP85-203-016 and RP88-203-013, Panhandle Eastern Pipe Line Company
Docket No. RP85-202-013, Trunkline Gas Company
Docket No. RP85-170-011, Texas Eastern Transmission Corporation
Docket No. RP85-181-007, Texas Gas Transmission Corporation
- CAG-28.
Docket Nos. GP83-11-003 and RI83-9-004, Colorado Interstate Gas Company
- CAG-29.
Docket No. OR89-2-005, Trans Alaska Pipeline System
Docket No. IS89-7-006, *et al.*, Amerada Hess Pipeline Corporation
Docket No. IS89-8-006, *et al.*, ARCO Transportation Alaska, Inc.
Docket No. IS89-9-006, *et al.*, BP Pipelines (Alaska), Inc.
Docket No. IS89-10-006, *et al.*, Exxon Pipeline Company
Docket No. IS89-11-006, *et al.*, Mobil Alaska Pipeline Company
Docket No. IS89-12-006, *et al.*, Phillips Alaska Pipeline Corporation
Docket No. IS89-13-006, *et al.*, Unocal Pipeline Company
- CAG-30.
Docket No. RP93-35-002, Northwest Pipeline Corporation
- CAG-31.
Docket No. RP94-127-001, Tennessee Gas Pipeline Company
- CAG-32.
Omitted
- CAG-33.

- Docket Nos. MG92-4-000 and MG93-1-000, Gas Transport, Inc.
CAG-34.
- Docket Nos. RS92-45-014, 016, RP94-87-000, 001, RP94-122-000, 001, RP94-169-000 and RP94-195-000, Natural Gas Pipeline Company of America
CAG-35.
- Docket Nos. RS92-10-009, RP92-134-010, RP93-15-006 and CP71-273-007, Southern Natural Gas Company
CAG-36.
- Docket No. RS92-64-012, High Island Offshore System
Docket No. RS92-88-014, U-T Offshore System
CAG-37.
- Docket No. RS92-23-021, Tennessee Gas Pipeline Company Docket No. RS92-33-008, East Tennessee Natural Gas Company
CAG-38.
- Omitted
CAG-39.
- Omitted
CAG-40.
- Docket No. CP93-425-001, CNG Transmission Corporation
CAG-41.
- Docket Nos. CP90-1777-000, 001 and 006, TransColorado Gas Transmission Company
CAG-42.
- Docket No. CP91-2069-000, Arkla Energy Resources Company
CAG-43.
- Omitted
CAG-44.
- Omitted
CAG-45.
- Omitted
CAG-46.
- Docket No. CP94-92-000, Columbia Gas Transmission Corporation
CAG-47.
- Docket Nos. CP93-431-000 and 001, Questar Pipeline Company
- Hydro Agenda**
H-1.
Reserved
- Electric Agenda**
E-1.
Docket Nos. TX93-4-000 and El93-51-000, Florida Municipal Power Agency v. Florida Power & Light Company. Order on service under section 211 of the Federal Power Act.
- Oil and Gas Agenda**
I. Pipeline Rate Matters
PR-1
Reserved
- II. Restructuring Matters*
RS-1.
Docket Nos. RS92-5-017, 018, RP90-108-025, RP91-82-016, RP91-161-022, RP92-3-013, RP93-66-005 and RP93-115-005, Columbia Gas Transmission Corporation
Docket Nos. RS92-6-015, 016, RP90-107-022, RP91-160-020, RP92-2-013 and CP93-736-004, Columbia Gulf

Transmission Company. Order on Order No. 636 compliance filing and rehearing.
RS-2.

Docket Nos. RS92-12-010, 011, RP89-183-055, RP91-152-028, RP93-171-002, TC89-8-011 and TM91-3-43-011, Williams Natural Gas Company. Order on Order No. 636 compliance filing and rehearing.

III. Pipeline Certificate Matters

PC-1.
Docket Nos. CP93-361-000 and 001, Sunshine Interstate Transmission Company. Order on application for certificate authorizing construction of new pipeline.
Dated: May 4, 1994.

Lois D. Cashell,
Secretary.
[FR Doc. 94-11291 Filed 5-5-94; 4:15 pm]
BILLING CODE 6717-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 2:30 p.m., Tuesday, May 3, 1994.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *U.S. Steel Mining Company, Inc.* Docket No. WEVA 92-783. (Issues include consideration of a judge's certification for interlocutory review.)

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that no earlier announcement of the meeting was possible. It was also determined that it be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/800-877-8339 Toll Free.

Dated: May 2, 1994.
Jean H. Ellen,
Chief Docket Clerk.
[FR Doc. 94-11305 Filed 5-5-94; 4:14 pm]
BILLING CODE 6735-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-15]
TIME AND DATE: May 11, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436

STATUS: Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-696-698 (Preliminary) (Magnesium from China, Russia, and the Ukraine)—briefing and vote.

5. Outstanding action jacket: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: May 4, 1994.

Donna R. Koehnke,
Secretary.
[FR Doc. 94-11292 Filed 5-5-94; 4:15 pm]
BILLING CODE 7020-02-P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 9:04 a.m., Thursday, May 5, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314-3428.

STATUS: Closed.

MATTERS CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice. Earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518-6304.

Becky Baker,
Secretary of the Board.
[FR Doc. 94-11290 Filed 5-5-94; 4:14 pm]
BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [59 FR 23262, May 5, 1994]

STATUS: Open meeting/Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: May 5, 1994.

CHANGE IN THE MEETING: Cancellation/Change of Time.

The open meeting scheduled for Monday, May 9, 1994, at 10 a.m. has been cancelled. The time for the closed meeting, scheduled for Monday, May 9, 1994 following the open meeting, has been changed to 10 a.m.

Commissioner Roberts, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For future information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Walsh at (202) 272-2000.

Dated: May 5, 1994.

Margaet H. McFarland,
Deputy Secretary.

[FR Doc. 94-11304 Filed 5-5-94; 4:14 pm]

BILLING CODE 8010-01-M

STATE JUSTICE INSTITUTE

TIME AND DATE: 9 a.m. to 5 p.m., May 13, 1994; 9 a.m. to 12 p.m., May 14, 1994.

PLACE: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

MATTERS TO BE CONSIDERED: Institute business and pending grant requests.

PORTIONS OPEN TO THE PUBLIC: Board business meeting and consideration of grant requests.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters and Board committee meetings.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684-6100.

David I. Tevelin,
Executive Director.

[FR Doc. 94-11293 Filed 5-5-94; 4:14 pm]

BILLING CODE 6820-SC-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 1 p.m., May 20, 1994.

PLACE: Uniformed Services University of the Health Sciences, room D3001,

4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

9:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes—7 February 1994; (2) Awards; (3) Medical Student Degrees; (4) Graduate Degrees; (5) Faculty Matters; (6) Department Reports; (7) Financial Report; (8) Report—President, USUHS; (9) Comment—Chairman, Board of Regents.

New Business

CONTACT PERSON FOR MORE INFORMATION: Bobby D. Anderson, Executive Secretary of the Board of Regents, 301/295-3116.

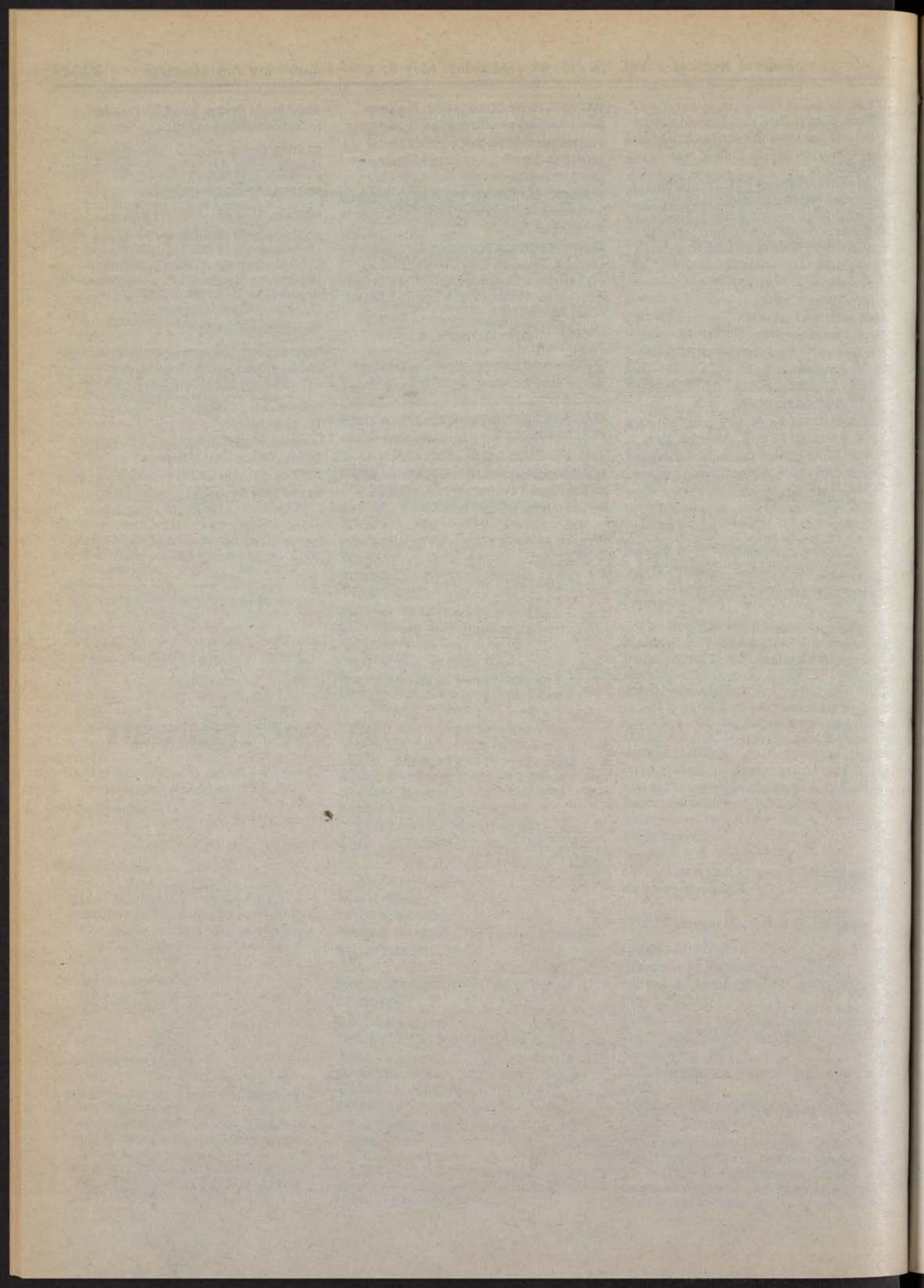
Dated: May 5, 1994.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-11215 Filed 5-5-94; 4:14 pm]

BILLING CODE 5000-04-M



Federal Register

Monday
May 9, 1994

Part II

Department of Health and Human Services

Administration for Children and Families
Office of Community Services

Request for Applications Under the Office
of Community Services' Fiscal Year 1994
Discretionary Grants Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services

[Program Announcement No. OCS-94-9]

Request for Applications Under the Office of Community Services' Fiscal Year 1994 Discretionary Grants Program

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Discretionary Grants Program.

SUMMARY: The Administration for Children and Families, Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681(a)(2) of the Community Services Block Grant Act of 1981, as amended. This Program Announcement consists of seven parts:

Part A covers information on legislative authorities and defines terms used in the Program Announcement;

Part B lists the three program priority areas under which grants will be made, describes the types of projects that will be considered for funding under each priority area, and defines which organizations are eligible to apply;

Part C provides details on application prerequisites, funds available in each priority area, limitations on grant amounts, project periods, who should benefit from the programs, and other application requirements;

Part D describes the application procedures, including the availability of forms, where and how to submit an application, the criteria used in screening and evaluating applications, and compliance with Federal requirements regarding the drug-free workplace and debarment requirements in submitting the application;

Part E describes the contents of the application package and receipt process;

Part F provides instructions for completing the SF-424 following standard Federal guidelines as well as OCS specific requirements, and describes how the project narrative should be ordered and presented; and

Part G details post-award information and reporting requirements.

CLOSING DATES: The closing date for submission of applications is June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Joseph D. Reid, Acting Director, Division of Community Discretionary Programs, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 401-9345.

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Part A—Preamble

1. Legislative Authority

Section 681(a)(2) of the Community Services Block Grant Act, as amended, authorizes the Secretary to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities.

2. Departmental Goals

This announcement is particularly relevant to the Departmental goal of strengthening the American family and promoting self-sufficiency. These programs have objectives of increasing the access of low-income people to employment-related opportunities, improving job skills, and improving the integration, coordination, and continuity of the various HHS (and other Federal Departments') funded

services potentially available to families living in poverty.

3. Definition of Terms

For purposes of this Program Announcement the following definitions apply:

—*Affiliate:* A private non-profit entity which has legal and/or financial ties to a community development corporation, and which also meets the statutory requirement that it be governed by a board consisting of residents of the community and business and civic leaders.

—*Community development corporation:* A private, locally initiated, nonprofit entity, governed by a board consisting of residents of the community and business and civic leaders, which has a record of implementing economic development projects or whose Articles of Incorporation and/or By-Laws indicate that it has a focus in the area of economic development.

—*Displaced worker:* An individual who is in the labor market but has been unemployed for six months or longer.

—*Distressed community:* A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

—*Eligible applicant:* (See appropriate Priority Area under part B.)

—*Indian tribe:* A tribe, band, or other organized group of Indians recognized in the State in which it resides or which is considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose. For the purpose of Priority Area 1.0 (Urban and Rural Community Economic Development) an Indian tribe or Indian organization is ineligible unless the applicant organization is a private non-profit community economic development corporation.

—*Job Creation:* Jobs that were not in existence prior to grant. (NOTE: Do not confuse this with Job Placement which is putting a person in a vacant job.)

—*Migrant farmworker:* An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

—*Rural:* An area that is not within the outer boundary of a metropolitan entity having a population of 25,000 or more and contiguous communities with a population density of 100 persons or more per square mile according to the latest decennial census. Such an area may be located

entirely within one State or made up of contiguous interstate communities.

—*Seasonal farmworker*: Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

—*Budget period*: The interval of time into which a grant period of assistance is divided for budgetary and funding purposes.

—*Project period*: The total time for which a project is approved for support, including any approved extensions.

—*Employment Education and Training Program*: A program that provides education and/or training to welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals and that has demonstrated organizational experience in education and training for these populations (JOBS, JTPA, etc).

—*Technical Assistance*: A problem-solving event generally utilizing the services of an expert. Such services may be provided on-site, by telephone, or other communications. These services address specific problems and are intended to assist with the immediate resolution of a given problem or set of problems.

Part B—Program Priority Areas

The program priority areas of the Office of Community Services' Discretionary Grants Program are as follows:

Priority Area

1.0 Urban and Rural Community Economic Development.

1.1 Urban and Rural Community Economic Development (Operational).

1.2 Urban and Rural Community Economic Development (HBCU Set-Aside).

1.3 Urban and Rural Community Economic Development (Pre-Developmental Set-Aside).

1.4 Technical Assistance (Set-Aside)

Priority Area

2.0 The Planning and Development of Rural Housing (including rental housing for low-income individuals) and Community Facilities.

2.1 Rural Housing (including rental housing for low-income individuals).

2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development).

Priority Area

3.0 Assistance for Migrants and

Seasonal Farmworkers.

3.1 Assistance for Migrants and Seasonal Farmworkers (General).

3.2 Assistance for Migrants and Seasonal Farmworkers (HBCU Set-Aside).

Priority Area 1.0 Urban and Rural Community Economic Development

Eligible applicants are private, locally initiated, non-profit community development corporations (or private non-profit affiliates of such corporations) governed by a board consisting of residents of the community and business and civic leaders which sponsor enterprises providing employment and business development opportunities for low-income residents of the community.

The purpose of this priority area is to encourage the creation of projects intended to provide employment and business development opportunities for low-income people through business, physical or commercial development, and generally to improve the quality of the economic and social environment of low-income residents, including displaced workers, at-risk teenagers, individuals residing in public housing, and individuals who are homeless, especially those with developmental disabilities. It is intended to provide resources to eligible applicants but also has the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas. Sub-Priority Area 1.4 is intended to provide technical assistance to current Office of Community Services' grantees who are experiencing problems in urban and rural community economic development projects.

To this end, the program also seeks to attract additional private capital into distressed communities, including state enterprise zones, and to build and/or expand the ability of local institutions to better serve the economic needs of local residents.

Sub-Priority Area 1.1 Urban and Rural Community Economic Development (Operational)

Funds will be provided to a limited number of private non-profit community development corporations (or private non-profit affiliates of such corporations) for business development activities at the local level. Funding will be provided for specific projects and will require the submission of business plans or developmental proposals that meet the test of economic feasibility.

Projects must further the Departmental goals of strengthening American families and promoting their

self-sufficiency. OCS is particularly interested in receiving applications that stress public-private partnerships that are directed toward the development of economic self-sufficiency through a focus on economic expansion.

Applicants located in State enterprise zones, i.e., an area in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are urged to submit applications. Such applicants may request funds for a business development project or a project that demonstrates innovative ways to create jobs in the poverty community.

Applications must show that the proposed project:

(1) Creates full-time permanent jobs. Seventy-five percent (75%) of those jobs created must be filled by low-income residents of the community and must also provide for career development opportunities. Project emphasis should be on employment of individuals who are unemployed or on public assistance, with particular emphasis on at-risk teenagers, AFDC recipients who are participating in the JOBS program, individuals residing in public housing, and individuals who are homeless. While projected employment in future years may be included in the application, it is essential that the focus of employment projects concentrate on those jobs created during the duration of the OCS project period; and/or

(2) Creates a significant number of business development opportunities for low-income residents of the community or significantly aids such residents in maintaining economically viable businesses; and

(3) Provides for establishing the self-sufficiency of program participants.

In the evaluation process, favorable consideration will be given to applicants under this priority area who show the lowest cost-per-job created. Unless there are extenuating circumstances, OCS will not fund projects where the cost-per-job in OCS funds exceeds \$15,000.

In addition, favorable consideration in the evaluation process will be given to applicants who demonstrate their intention to coordinate services with the local JOBS office and/or other employment education and training offices that serve the proposed area. The JOBS or other employment education and training offices should serve welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals (as defined by DHHS poverty guidelines). Applicants should submit a written agreement from the JOBS or other local employment education and training office that indicates what actions will be taken to integrate/coordinate services that relate directly to the project for

which funds are being requested. The agreement should include the goals and objectives (including target groups) that the applicant and the employment education and training office expect to reach through their collaboration. It should describe the cooperative relationship, including specific activities and/or actions each of these entities proposes to carry out in support of the project, and the mechanism(s) to be used in coordinating those activities if the project is funded by OCS. Documentation that illustrates the organizational experience of the employment education and training program should also be included.

Any applicant which proposes to use the requested OCS funds to make an equity investment such as the purchase of stock, or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of the OCS funds, must include in its application a written agreement with the third party that commits the latter to the following:

1. A minimum of 75% of the jobs to be created under the grant will be for low-income individuals.
2. The grantee will have authority to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility.
3. The grantee will have a seat on the Board of Directors of the third party's firm if the grantee's investment equals 25% or more of the firm's assets. (Not applicable to loans made to third parties.)
4. Reports will be made on a quarterly basis to the grantee on the use of grant funds.
5. A procedure will be developed to assure that there are no duplicative counts of jobs created.
6. Detailed information will be provided on how the grant funds will be used by the third party by submitting a Source and Use of Funds Statement. In addition, the agreement will provide details on how the community development corporation will provide support and technical assistance to the third-party in areas of recruitment and retention of low-income individuals.

Any funds that are proposed to be used for training purposes must be limited to providing specific job-related training to those poverty level individuals who have been selected for employment in the grant supported project.

OCS encourages applications that create linkages with community organizations administering the JOBS program which will train and place residents dependent on public assistance into jobs created by the project funded under this priority area.

Projects which would result in the relocation of a business from one geographic area to another with the possible displacement of employees are discouraged.

OCS will not consider applications that propose to establish or expand revolving loan funds, nor proposals that are geared towards the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

OCS does not anticipate approving the funding of applications which propose to sub-grant all or most of the grant activities to an unrelated entity.

Applicants must be aware that projects funded under this priority area must be operational by the end of the project period, i.e., businesses must be in place, and low-income individuals actually employed in those businesses.

See Part F, 6, for special instructions on developing a work program for this priority area.

Sub-Priority Area 1.2 Urban and Rural Community Economic Development (HBCU Set-Aside)

For Fiscal Year 1994, a set-aside fund of \$2,250,000 will be included under this priority area for eligible applicants that submit projects that will be carried out in conjunction with Historically Black Colleges and Universities through contract or sub-grant. Such projects must conform to the purposes, requirements and prohibitions applicable to those submitted under Sub-Priority Area 1.1.

Any funds that are proposed to be used for training must be directly related to the project and all individuals trained must be placed in a newly created job or business.

These projects should reflect a significant partnership role for the college or university, and the applicant in doing so will be considered to have fulfilled the goals of the Public-Private Partnerships evaluation criterion and will be granted the maximum number of points in that category. Applications for these set-aside funds which are not funded due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants under Sub-Priority Area 1.1.

See Part F, 6, for special instructions on developing a work program for this priority area.

Sub-Priority Area 1.3 Urban and Rural Community Economic Development (Pre-Developmental Set-Aside)

OCS intends in this priority area to provide funds to recently-established private, locally initiated non-profit community development corporations (or affiliates of such corporations) which propose to undertake economic development activities in distressed communities.

OCS recognizes that there are a number of newly-organized non-profit community development corporations who have identified needs in their communities but who have not had the staff or other resources to develop projects to address those needs. This lack of resources also might be affecting their ability to compete for funds, such as those provided under OCS's Urban and Rural Community Development Program (Operational Grants) since their limited resources would preclude them from developing a comprehensive business plan and/or mobilizing resources. OCS has an interest in providing support to these new entities in order to enable them to become more firmly established in their communities, thereby bringing technical expertise and new resources to these previously unserved or underserved communities. Therefore, OCS is setting aside \$750,000 in Fiscal Year 1994 for grants to private non-profit community development corporations which have been in existence for no more than three years and have never received OCS funding. From this sum, grants of up to \$75,000 each will be made to eligible applicants. These grants will be made for a period of one year and will not require matching funds.

The grants will be pre-developmental grants under which CDCs or their affiliates may incur costs to: (1) Evaluate the feasibility of potential projects which address identified needs in the low-income community and which conform to those projects and activities allowable under Sub-Priority Areas 1.1 and 1.2; (2) develop a Business Plan related to one of those projects; and (3) mobilize resources to be contributed to projects, including the utilization of Historically Black Colleges and Universities. Based on the availability of funds in Fiscal Year 1996, OCS will consider establishing a set-aside to provide operational funds to those organizations which received pre-developmental grants. Grants might be for a maximum of \$250,000 and competition for those funds will be restricted to those organizations receiving Fiscal Year 1994 pre-developmental grants. The Business Plan developed as a result of the pre-developmental grants would be submitted as part of the competitive application.

Each application for Fiscal Year 1994 funded under this Priority Area must include the following as part of the project narrative in Part IV of the SF-424.

1. Description of the impact area, i.e., a description of the low-income area it proposes to address;

2. Analysis of need in the distressed community;

3. Project objectives and measurable impact, i.e., a discussion of the types of projects that might be implemented to address the identified needs and how the proposed projects relate to the applicant's organizational goals and previous experience (if any); and

4. Implementation factors and quarterly work plans with specific task timelines.

Sub-Priority Area 1.4 Technical Assistance

Funds will be awarded under this sub-priority area for the purpose of providing technical assistance to grantees funded under the Office of Community Services' Discretionary Grants Program. OCS recognizes that there are grantees which encounter problems in attempting to implement their projects. Some of the grantees lack staff capability or resources to resolve these problems. Therefore, OCS intends to provide funds to two private, non-profit, locally initiated community development corporations which will allow these organizations to provide assistance to other grantees. The grants would be for a maximum of \$250,000 with a grant period not to exceed 17 months. Requests for assistance would be initiated by OCS with the concurrence of the grantee to be assisted, or the request could be initiated by the grantee with the concurrence of OCS. The requests should relate to specific, identified problems. The assistance may be given on-site, by telephone, or by other means of communication. Assistance will be provided free of charge to the grantee by the technical assistance provider.

Priority Area 2.0 The Planning and Development of Rural Housing (Including Rental Housing for Low-Income Individuals) and Community Facilities

Sub-Priority Area 2.1 Rural Housing (Including Rental Housing for Low-Income Individuals)

Eligible applicants are States, public agencies or private non-profit organizations, including Historically Black Colleges and Universities.

The purpose of this priority area is to assist low-income residents in rural communities by providing grants to eligible applicants to: (a) Provide technical assistance to help low-income families and individuals more effectively utilize existing local, State and Federal housing assistance programs; and (b) develop innovative ways to meet the housing needs of low-

income people, e.g., the rehabilitation or repair of existing substandard housing units for occupancy by low-income residents, the conversion of non-residential buildings to low-income residential use, and the purchase of homes by low-income people.

OCS encourages applications that will assist low-income homeowners to improve their housing through self-help rehabilitation. These applications should not include projects which can be funded through other existing Federal programs.

OCS also encourages the submission of proposals with the aim of assisting homeless families and those at risk of homelessness. Innovative ways to address housing needs of homeless families is of particular interest to OCS.

Projects should produce the following types of tangible improvements and benefits related to housing conditions for rural poor people: interior or exterior structural repairs including weatherization and alternative energy systems; jobs created for local unskilled residents while assuring quality work; technical assistance and professional services related to housing and community planning by community-based design and planning organizations. (Such projects should be conducted with maximum use of voluntary services of professional and community personnel, and development of innovative housing strategies to help low-income rural residents acquire housing.)

Applications calling for new construction or gut rehabilitation will only be considered if the application documents that there is insufficient existing housing stock that can be economically rehabilitated.

Funds will not be available for the repair or rehabilitation of low-income rental housing unless the structure is either occupied by a low-income owner or the properties to be repaired are (a) owned by a private non-profit organization and (b) covered by a written agreement which will ensure continued occupancy by low-income people for at least three years after completion of repairs and rehabilitation.

OCS is particularly interested in receiving applications from such entities as rural housing development corporations, cooperatives, and other public and private organizations with proven accomplishments in the area of rural housing.

See Part F, 6, for special instructions on developing a work program for this priority area.

Sub-Priority Area 2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Funds will be provided under this priority area to help low-income rural communities develop the capability and expertise to establish and/or maintain affordable, adequate and safe water and waste water treatment facilities.

Funds provided under this priority area may not be used for construction of water and waste water treatment systems or for operating subsidies for such systems, but other mobilized funds may be used for these activities. Therefore, it is suggested that applicants coordinate projects with the Farmers Home Administration (FmHA) and other Federal and State agencies to ensure that funds for hardware for local community projects are available.

Eligible applicants are public or private non-profit organizations, including Historically Black Colleges and Universities. In accordance with the authorizing legislation, funding priority will be given to private non-profit organizations that, before the date of the enactment of the Human Services Reauthorization Act of 1986, carried out such programs under the authority found at section 681(1)(2)(D) of the Community Services Block Grant Act.

See Part F.6, for special instructions on developing a work program for this priority area.

Priority 3.0 Assistance for Migrants and Seasonal Farmworkers

Sub-Priority 3.1 Assistance for Migrants and Seasonal Farmworkers (General)

Eligible applicants are States, public agencies and private non-profit organizations, including Historically Black Colleges and Universities.

The purpose of this priority area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrants and seasonal farmworkers in order to improve their quality of life and advance self-sufficiency.

OCS will entertain proposals that directly meet farmworker needs in such areas as: Homelessness; crisis nutritional relief; the development of self-help systems of food production; emergency health and social services referral and assistance; home repair, rehabilitation, and ownership; direct assistance to low-income farmworkers, including at-risk teenagers, to improve their job skills for them to qualify for long term and permanent full-time employment in agriculture; and/or assistance to low-income farmworkers,

including at-risk teenagers, who wish to leave agricultural employment and find jobs in other lines of work. Linkages with the local JOBS program are encouraged wherever appropriate.

Applicants must provide quantifiable objectives for each of the above activities which will be included in the project. OCS encourages applicants to develop linkages with other public and private sector service providers who also are working with migrant and seasonal farmworkers or with issues affecting this target group.

For projects that relate to job skills and training, OCS will not consider applications proposing to use funds exclusively for classroom instruction. Placement in permanent jobs must be an integral activity of any training project.

Applications submitted under this priority area must not contain requests for OCS funding for projects that would duplicate Community Services Block Grant funding or activities for which funding is available from other Federal agencies such as the Department of Labor and the Department of Agriculture's Women, Infants and Children (WIC) program.

See Part F, 6, for special instructions on developing a work program for this priority area.

Sub-Priority Area 3.2 Assistance for Migrants and Seasonal Farmworkers (HBCU Set-Aside)

For Fiscal Year 1994, a fund of \$300,000 will be set aside for Historically Black Colleges and Universities to enable them to offer continuing education to migrants and seasonal farmworkers and to increase participant employment opportunities. Applicants must provide quantifiable objectives for each of the activities which will be included in the project. Applications which are not funded within this set-aside due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants under Sub-Priority Area 3.1.

See Part F, 6, for special instructions on developing a work program for this priority area.

Part C—Application Prerequisites

1. Eligible Applicants

Priority areas included in this Program Announcement have differing eligibility requirements. Therefore, eligible applicants are identified in the individual priority area descriptions found in Part B, above.

2. Availability of Funds

a. FY 1994 Funds. The Office of Community Services expects to award

funds by September 30, 1994 for new grants. The maximum amount of funds available for each Priority Area is summarized below:

Priority area	Fiscal year 1994 funds
1.0 Urban and Rural Community Economic Development.	
1.1 Urban and Rural Community Economic Development (Operational)	\$18,733,000
1.2 Urban and Rural Community Economic Development (HBCU Set-Aside)	2,250,000
1.3 Urban and Rural Community Economic Development (Pre-Developmental Set-Aside)	750,000
1.4 Technical Assistance (Set Aside)	500,000
2.0 Planning and Development of Rural Housing and Community Facilities Development	5,460,000
3.0 Assistance for Migrants and Seasonal Farmworkers.	
3.1 Assistance for Migrants and Seasonal Farmworkers (General)	2,647,000
3.2 Assistance for Migrants and Seasonal Farmworkers (HBCU Set-Aside)	300,000

b. Grant Amounts. No more than the below stated amounts will be granted for projects under the Priority Areas as indicated:

Sub-priority area	Funding limit
1.1	\$700,000
1.2	750,000
1.3	75,000
1.4	250,000
2.1	250,000
2.2	425,000
3.1	250,000
3.2	75,000

3. Project and Budget Periods

For Sub-Priority Areas 1.1, and 1.2, applicants with projects involving construction only, may request project and budget periods of up to 36 months. Applicants for other economic development projects under those priority areas and Sub-Priority Areas 1.4, 2.1, 3.1 and 3.2 may request project and budget periods of up to 17 months. For Sub-Priority Area 2.2, grantees will be funded for a 12 month project period. For Sub-Priority Area 1.3, applicants may request project and budget periods of up to 12 months. By fully funding the projects in FY 94 funding stability in future years will be insured.

4. Mobilization of Resources

OCS encourages and strongly supports mobilization of resources through public/private partnerships which can mobilize cash and/or third-party in-kind contributions. (See Part D, Criteria VA.)

5. Program Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits to low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS.

Attachment A to this Announcement is an excerpt from the guidelines currently in effect. Annual revisions of these guidelines are normally published in the *Federal Register* in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs.

Note, however, that low-income individuals granted lawful temporary resident status under Sections 245A or 210A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (Public law 99-603) may not be eligible for direct or indirect assistance based on financial need under this program for a period of five years from the date such status was granted.

6. Number of Projects in Application

An application may contain only one project (except for Priority Areas 1.3, 1.4, and 3.1 where applicants are researching various opportunities, providing assistance to current OCS grantees, or having a multi-faceted approach to Migrants' issues) and this project must be identified as responding to one of the program priority areas stated in this Announcement. Applications which are not in compliance with this requirement will be ineligible for funding.

7. Multiple Submittals

There is no limit to the number of applications that can be submitted under a specific program priority area as long as each application contains a proposal for a different project. However, an applicant will receive only one grant in any Priority Area.

8. Sub-Contracting or Delegating Projects

OCS does not fund projects where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested.

9. Previous Performance and Current Grants

Previous performance of applicants will be a determining factor in the grant award decisions. Any applicant which has three or more active OCS grants may only be funded under exceptional circumstances.

Part D—Application Procedures

1. Availability of Forms

Attachments B, C, and D contain all of the standard forms necessary for the application for awards under these OCS programs. These forms may be photocopied for the application.

Copies of the *Federal Register* containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this announcement.

For purposes of this announcement, all applicants will use SF-424, SF-424A, and SF-424B, regardless of the priority area governing the project. Applications proposing construction projects will also present all required financial data using SF-424A. Instructions for completing the SF-424, SF-424A, and SF-424B are found in Attachments B, C, and D.

Part F contains instructions for the project narrative and project abstract. They will be submitted on plain bond paper along with the SF-424 and related forms.

Attachment J provides a checklist to aid applicants in preparing a complete application package for OCS.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.

2. Application Submission

Applications must be submitted to ACF by the closing date. Refer to Closing Date at the beginning of this document for the specific date.

Applications may be mailed to: Administration for Children and

Families, Office of Financial Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 6th Floor (OCS-94-9), Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at the below listed address: Administration for Children and Families, Office of Financial Management, Division of Discretionary Grants, 901 D Street SW., 6th Floor (OCS-94-9), Washington, DC 20447.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office. In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it is the correct date of mailing, before accepting a receipt.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

One signed original application and four copies are required. The first page of the SF-424 must contain in the lower right-hand corner, a **designation indicating under which priority area funds are being requested (See Part F, section 1, subsection 11).**

3. Intergovernmental Review

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Alabama, Connecticut, Hawaii,

Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Virginia, Pennsylvania, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seventeen jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Financial Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 6th Floor, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this announcement.

4. Application Consideration

Applications which meet the screening requirements in sections 5a and b below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and evaluation criteria published in this announcement.

Applications submitted under all priority areas will be reviewed by persons outside of the OCS unit which will be directly responsible for

programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants. Applicants with three or more incomplete grants at the time of review may be denied funding.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applicants

a. Initial screening. All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 Application for Federal Assistance (SF 424), a budget (SF-424A), and signed Assurances (SF 424B) completed according to instructions published in Part F and Attachments B, C, and D of this Program Announcement.

(2) A project narrative and a project abstract must also accompany the standard forms.

(3) The SF-424 and the SF-424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(4) The application must be submitted for consideration under one priority area only.

b. Pre-rating review. Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff prior to the programmatic review to verify that the applications comply with

this Program Announcement in the following areas:

(1) *Eligibility*: Applicant meets the eligibility requirements for the priority area under which funds are being requested. Proof of non-profit status must be included in the Appendices of the Project Narrative where applicable. Applicants must also be aware that the applicant's legal name as required in SF-424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Number of Projects*: An application may contain only one project (except for Priority Areas 1.3, 1.4, and 3.1 where applicants are researching various opportunities, providing assistance to current OCS grantees, or have a multi-faceted approach to Migrants' issues) and this project must be identified as responding to one of the program priority areas stated in this Announcement.

(3) *Grant amount*: The amount of funds requested does not exceed the limits indicated in Part C, 2, b for the appropriate priority area.

(4) *Written Agreement When Applicant Proposes to Make Equity Investment, Loan, or Sub-Grant*: (Sub-Priority Areas 1.1, and 1.2): The application contains a written agreement signed by the applicant and the third party which includes all of the elements required in Part B.

An application may be disqualified from the competition and returned if it does not conform to one or more of the above requirements.

c. Evaluation criteria. Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained under each program priority area as described in Part B.

Note: the following review criteria reiterate collection of information requirements contained in Part F of this announcement. These requirements are approved under OMB Control Number 0970-0062.

6. Criteria for Review and Evaluation of all Applications Except Sub-Priority Areas 1.3 and 1.4

(a) *Criterion I: Analysis of Need* (Maximum: 5 points). The application documents that the project addresses a

vital need in a distressed community and provides statistics and other data and information in support of its contention.

(b) *Criterion II: Organizational Experience in Program Area and Staff Responsibilities* (Maximum: 15 points)—(i) *Organizational Experience in Program Area* (sub-rating: 0-5 points). Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population.

Organizations which propose providing training and technical assistance have detailed competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

Applicable to Sub-Priority Areas 1.1, and 1.2

The applicant has demonstrated the ability to implement major activities in such areas as business development, commercial development, physical development, or financial services; the ability to mobilize dollars from sources such as the private sector (corporations, banks, etc.), foundations, the public sector, including State and local governments, or individuals; that it has a sound organizational structure and proven organizational capability; and an ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities, and other benefits to community residents.

(ii) *Staff Skills, Resources and Responsibilities* (sub-rating 0-10 points). The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to

assure timely implementation and cost effective management of the project.

(c) *Criterion III: Project Implementation (Maximum: 25 points)*. The Work Plan, or Business Plan where appropriate, is both sound and feasible. The project is responsive to the needs identified in the Analysis of Need. It sets forth realistic quarterly time targets by which the various work tasks will be completed. Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be reasonably attained despite such potential problems.

(d) *Criterion IV A: Significant and Beneficial Impact (Maximum: 30 points)* (Applicable to Sub-Priority Areas 1.1, and 1.2)—(i) *Significant and Beneficial Impact (sub-rating: 0-15 points)*. The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the community. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income communities, distressed communities, and/or designated enterprise zones.

(ii) *Cost-per-Job (sub-rating: 0-10 points)*. During the project period the proposed project will create new, permanent jobs or maintain permanent jobs for low-income residents at a cost-per-job below \$15,000 in OCS funds.

Note: The maximum number of points will be given to those applicants proposing cost-per-job estimates of \$5,000 or less of OCS requested funds. Higher cost-per-job estimates will receive correspondingly fewer points.

(iii) *Career Development Opportunities (sub-rating: 0-5 points)*. The application documents that the jobs to be created for low-income people have career development opportunities which will promote self-sufficiency.

(e) *Criterion IV B: Significant and Beneficial Impact (Maximum: 30 points)* (Applicable to Sub-Priority Areas 2.1, 2.2, 3.1 and 3.2)

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted and significantly enhance the self sufficiency of program participants. Results are quantifiable in terms of program area expectations, e.g., number of units of housing rehabilitated, agricultural and non-agricultural job placements, etc. The

OCS grant funds, in combination with private and/or other public resources, are targeted into low-income and/or distressed communities and/or designated enterprise zones.

(f) *Criterion V: Public-Private Partnerships (Maximum: 20 points)*—(1) *Mobilization of resources: (sub-rating: 15 points)*. The application documents that the applicant will mobilize from public and/or private sources cash and/or in-kind contributions valued at an amount equal to the OCS funds requested. Applicants documenting that the value of such contributions will be at least equal to the OCS funds requested will receive the maximum number of points for this Criterion. Lesser contributions will be given consideration based upon the value documented. Applicants under Sub-Priority Area 1.2 who are proposing to enter into a partnership with Historically Black Colleges and Universities are deemed to have fully met this criterion and will receive the maximum number of points if they document the participation of the HBCU.

(2) *Integration/coordination of services: (sub-rating: 5 points)* The applicant demonstrates a commitment to coordination with the local JOBS office and/or other employment education and training program (such as JTPA) to ensure that welfare recipients, at-risk youth, displaced workers, public housing tenants, homeless and low-income individuals will be trained and placed in the newly created jobs. The applicant provides written agreement from the local JOBS or other employment education and training office indicating what actions will be taken to integrate/coordinate services that relate directly to the project for which funds are being requested.

Specifically, the agreement should include: (1) The goals and objectives that the applicant and the JOBS or other employment education and training office expect to achieve through their collaboration; (2) the specific activities/actions that will be taken to integrate/coordinate services on an on-going basis; (3) the target population that this collaboration will serve; (4) the mechanism(s) to be used in integrating/ coordinating activities; (5) how those activities will be significant in relation to the goals and objectives to be achieved through the collaboration; and (6) how those activities will be significant in relation to their impact on the success of the OCS-funded project.

The applicant should also provide documentation that illustrates the organizational experience related to the employment education and training

program (refer to Criterion II for guidelines).

(g) *Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points)*. Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget break-down for each of the budget categories in the SF-424A. The applicant presents a reasonable administrative cost. The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

7. Criteria for Review and Evaluation of Applications Submitted Under Sub-Priority Area 1.3

a. *Criterion I: Organizational Capability and Capacity (Maximum: 20 Points)*—(1) *Organizational experience in program area (sub-rating: 5 Points)*. Where the applicant has a history of prior achievement in economic development, the documentation must address the relevance and effectiveness of projects undertaken, especially their cost effectiveness and the relevance and effectiveness of any services and the permanent benefits provided to the targeted population. Applicants must also indicate why they feel that they can successfully implement the project for which they are requesting funds.

(2) *Management capacity (sub-rating: 5 points)*. Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures along with a statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(3) *Staffing (sub-rating: 5 points)*. The application must fully describe (e.g., resumes) the experience and skills of key staff showing that they are not only well qualified but that their professional capabilities are relevant to the successful implementation of the project.

(4) *Staffing responsibilities (sub-rating: 5 points)*. The application must describe how the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

b. *Criterion II: Significant and Beneficial Impact (Maximum: 35 Points)*. The work plan funded under this announcement must show that there is a clearly identified need in a low-income area which is not being effectively addressed currently.

Project funds under this announcement must be used to develop a Business Plan for a project which would produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted and mobilize non-discretionary program dollars from private sector individuals, public resources, corporations, and foundations if the project is implemented. The project around which the Business plan is developed with the use of OCS grant funds must be targeted into low-income communities, and/or designated enterprise zones, with the goals of increasing the economic conditions and social self-sufficiency of residents. Activities must be designed to achieve the specific Program Priority Area 1.3 objectives as defined in this program announcement.

c. *Criterion III: Project Implementation and Evaluation (Maximum: 30 Points)*. (1) *Project implementation component (sub-rating: 25 points)*. The application must contain a detailed and specific work plan that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion. It must define critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

(2) *Evaluation component (sub-rating: 5 points)*. All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation in (1) above should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

d. *Criterion IV: Budget Appropriateness and Reasonableness (Maximum: 15 points)*. Each applicant should carefully review the requirements of Program Sub-Priority Area 1.3 and the budget submitted must coincide with those requirements.

The proposal's request for funds must include a detailed budget breakout for each of the pertinent budget categories in part III, section B of the SF-424. (Please identify any positions for which less than full-time funding is requested.)

8. *Criteria for Review and Evaluation of Applications Submitted Under Sub-Priority Area 1.4*

(a) *Criterion I: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 20 points)*—(i) *Organizational Experience in Program Area (sub-rating: 0-10 points)*. Applicant has documented the capability to provide leadership in solving long-term and immediate problems locally and/or nationally in such areas as business development, commercial development, organizational and staff development, board training, and micro-entrepreneurship development. Applicant must document a capability (including access to a network of skilled individuals and/or organizations) in two or more of the following areas: Business Management, including strategic planning and fiscal management; Finance, including development of financial packages and provision of financial/accounting services; and Regulatory Compliance, including assistance with zoning and permit compliance. Further, the applicant has the demonstrated ability to mobilize dollars from sources such as the private sector (corporations, banks, foundations, etc.) and the public sector, including state and local governments. Applicant also demonstrates that it has a sound organizational structure and proven organizational capability as well as an ability to develop and maintain a stable program in terms of business, physical or community development activities that have provided permanent jobs, services, business development opportunities, and other benefits to poverty community residents.

Applicants must indicate why they feel that their successful experiences would be of assistance to existing grantees which are experiencing difficulties in implementing their projects.

(ii) *Staff Skills, Resources and Responsibilities (sub-rating 0-10 points)*. The application describes in brief resume form the experience and skills of the project director who is not

only well qualified, but who has professional capabilities relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

(b) *Criterion II: Work Program (Maximum: 30 points)*. Based upon the applicant's knowledge and experience related to OCS's Discretionary Grants Program (particularly community economic development), the application should demonstrate in some specificity a thorough understanding of the problems a grantee may encounter in implementing a successful project. The application should include a strategy for assessing the specific nature of the problems, outlining a course of action and identifying the resources required to resolve the problems.

(c) *Criterion III: Significant and Beneficial Impact (Maximum: 30 points)*. Project funds under this sub-priority area must be used for the purpose of providing technical assistance directly or by a contract with a third party, to other OCS funded grantees. Applicants must document how the success or failure of the assistance provided will be documented.

Applicants must demonstrate an ability to disseminate results on the kinds of assistance provided and successful strategies that they may have developed to serve grantees during the grant period. Applicants must state whether the results of the project will be included in a handbook, a progress paper, an evaluation report or a general manual and why the particular methodology chosen would be most effective in assisting other grantees.

d. *Criterion IV: Public-Private Partnerships (15 points)*. The applicant demonstrates that it has worked with local, regional, state or national offices to ensure that welfare recipients, at-risk youth, displaced workers, public housing tenants, homeless and low-income individuals have been trained and placed in newly created jobs.

Applicant should demonstrate how it will design a comprehensive strategy which makes use of other available

resources to resolve typical and recurrent grantee problems.

e. Criterion V: Budget

Appropriateness and Reasonableness (Maximum: 5 points). Applicant documents that the funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget break-down for each of the appropriate budget categories in the SF-424A. The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application, whether involving construction or not, should include one original and four additional copies of the following:

- a. A signed Application for Federal Assistance (SF-424);
- b. Budget Information-Non-Construction Programs (SF-424A);
- c. A signed Assurances-Non-Construction Programs (SF-424B);
- d. A Project Abstract
- e. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:
 - (i) Eligibility Confirmation;
 - (ii) Analysis of Need (except for Sub-Priority 1.4);
 - (iii) Organizational Experience and Staff Responsibilities;
 - (iv) Work Program (including Executive Summary);
 - (v) Appendices, including By-Laws; Articles of Incorporation; proof of non-profit status where applicable; resumes; written agreements re grants, coordination with JOBS, etc.; Single Point of Contact comments, where applicable; certification regarding anti-lobbying activities; and a disclosure of lobbying activities.

The application package should not exceed 50 pages for applications submitted under sub-priority areas 1.1, and 1.2, and 30 pages for all applications submitted under the other sub-priority areas.

Applications should be two holed punched at the top center and fastened with a compressor slide paper fastener or a binder clip. The submission of bound applications, or applications enclosed in binders, is especially discouraged.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must

be submitted on white 8 1/2 X 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded, if included.

2. Acknowledgement of Receipt

All applicants will receive an acknowledgement notice with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement notice. The identification number and the program priority area letter code must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401-9234.

Part F—Instructions for Completing Application Package

(Approved by the Office of Management and Budget under Control Number 0970-0062. The standard forms attached to this announcement shall be used to apply for funds for all priority areas described in this announcement.)

It is suggested that you reproduce the SF-424 and SF-424A, and type your application on the copies. If an item on the SF-424 cannot be answered or does not appear to be related or relevant to the assistance requested, write NA for Not Applicable.

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

1. SF-424 Application for Federal Assistance Item

1. For the purposes of this announcement, all projects are considered Applications; there are no Pre-Applications. Also for the purposes of this announcement, construction projects are those which involve major renovations or new construction. All others are considered non-construction. Check the appropriate box under Application.

5. and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (PIN/EIN) and the Payment Identifying Number, if one has been assigned, in the

Block entitled Federal Identifier located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter N in the box and specify non-profit corporation in the space marked Other. Proof of non-profit status, such as IRS determination or appropriate sections of the Articles of Incorporation, or By-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are New.

9. Enter DHHS-ACF/OCS.

10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.570. The title is CSBG Discretionary Awards.

11. The following letter program priority area designations must be used:

- UR—for Sub-Priority Area 1.1. Urban and Rural Community Economic Development (Operational)
- HB—for Sub-Priority Area 1.2. Urban and Rural Community Economic Development (HBCU Set-Aside)
- PD—for Sub-Priority Area 1.3. Urban and Rural Community Economic Development (Pre-Developmental Set-Aside)
- UT—for Sub-Priority Area 1.4. Technical Assistance (Set-Aside)
- RH—for Sub-Priority Area 2.1. Rural Housing Repairs and Rehabilitation (including rental housing for low-income individuals).
- RF—for Sub-Priority Area 2.2. Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)
- MS—for Sub-Priority Area 3.1. Assistance for Migrants and Seasonal Farmworkers (General)
- HM—for Sub-Priority Area 3.2. Assistance for Migrants and Seasonal Farmworkers (HBCU Set-Aside)

2. SF-424A—Budget Information—Non-Construction Programs

See Instructions accompanying this form as well as the instructions set forth below:

In completing these sections, the Federal Funds budget entries will relate to the requested OCS discretionary funds only, and Non-Federal will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS discretionary funding should be included in Non-Federal entries.

The budget forms in SF-424A are only to be used to present grant administrative costs and major budget categories. Financial data that is

generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of SF-424A must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Clearly identified continuation sheets in SF-424A format should be used as necessary.

Section A—Budget Summary

Lines 1-4

Col. (a):

Line 1 Enter CSBG Discretionary;

Col. (b):

Line 1 Enter 93.570;

Col. (c) and (d):

Applicants should leave columns (c) and (d) blank.

Col. (e)-(g):

For line 1, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the budget period.

Line 5 Enter the figures from Line 1 for all columns completed as required, (c), (d), (e), (f), and (g).

Section B—Budget Categories

Allowability of costs are governed by applicable cost principles set forth in 45 CFR parts 74 and 92. Columns (1) and (5):

In OCS applications, it is only necessary to complete Columns (1) and (5).

Column 1: Enter the total requirements for OCS Federal funds by the Object Class Categories of this section:

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of all travel by employees of the project. Travel costs for the Executive Director or Project Director to attend a two day national workshop in Washington, DC should be included. Do not enter costs for consultant's travel. Provide justification for requested travel costs.

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. Non-expendable personal property

means tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of this form (SF-424A), completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of renovation, repair, or new construction. Provide narrative justification and breakdown of costs.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another Federal agency or is awaiting such approval. With the exception of local governments, applicants should enclose a copy of the current rate agreement if

it was negotiated with a Federal agency other than the Department of Health and Human Services.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates*, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Totals—Line 6k: Enter the total amounts of Lines 6i and 6j. The total amount shown in Section B, Column (5), Line 6k, should be the same as the amount shown in Section A, Line 5, Column (e).

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Section C—Non-Federal Resources

This section is to record the amounts of non-Federal resources that will be used to support the project. Non-Federal resources mean other than OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act program, should be entered on these lines. Provide a brief listing of the non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the Public-Private Partnerships criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Line 8:

Column (a): Enter the project title.

Column (b): Enter the amount of contributions to be made by the applicant to the project.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d). Lines 9, 10, and 11 should be left blank.

Line 12: Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Line 13: Enter the amount of Federal (OCS) cash needed for this grant by quarter. During the budget period for grants which are more than twelve (12) months, submit a separate sheet for each additional twelve (12) months or portion thereof.

Line 14: Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15: Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

Completion not required.

Section F—Other Budget Information

Line 21: Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative.

D. Contractual: Major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22: Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23: Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF-424B Assurances-Non-Construction—All applicants, whether or not project involves construction, must fill out, sign and date form found at Attachment D.

4. Restrictions on Lobbying Activities—Certification for Contracts, Grants, Loans, and Cooperative Agreements: Fill out, sign and date form found at Attachment H.

5. Disclosure of Lobbying Activities, SF-LLL: Fill out, sign and date form found at Attachment H, if applicable.

6. Project Abstract
The project abstract is a brief summary of the project to include specific benefits such as number of jobs to be created, especially jobs for low-income individuals. The abstract must not exceed 150 characters (including words, spaces and punctuation) on a separate sheet of plain paper headed by the applicant's name as shown in item 5 of the SF 424 and the priority area number as shown by you at the bottom of the SF 424.

7. Project Narrative
The project narrative must address the specific concerns mentioned under the relevant priority area description in Part B. The narrative should provide information on how the application meets the evaluation criteria in Part D, Section 5 c of this Program Announcement and should follow the format below:

a. Eligibility confirmation. This section must explain how the applicant has complied with each of the basic requirements listed in Part D, 5b(1)–(5), i.e., (1) that the applicant meets the eligibility requirements for the sub-priority area under which funds are being requested; (2) an application submitted under subpriority areas 1.1,

1.2, 2.1, 2.2, or 3.2 contains only one project; (3) the amount of funds requested does not exceed the limits indicated in Part C, Section 2, b for the appropriate sub-priority area; (4) (Sub-Priority Areas 1.1, and 1.2) if an applicant proposes to use OCS funds for an equity investment, a loan, or a sub-grant, the application contains a written agreement signed by the applicant and the third party which includes all of the elements required in Part B. An application may be disqualified from the competition and returned if it does not conform to one or more of the above requirements.

b. Analysis of need. The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. It should also include documentation supportive of its needs assessment such as employment statistics, housing statistics, etc.

c. Organizational experience and staff responsibilities. (i) Organizational experience. Each applicant must document competence in the specific program priority area under which an application is submitted.

Documentation must be provided which addresses the relevance and effectiveness of projects previously undertaken in the specific priority area for which funds are being requested and especially their cost effectiveness, the relevance and effectiveness of any services provided, and the permanent benefits provided to the low-income population. Organizations which propose providing training and technical assistance must detail their competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization.

Applicable to Sub-Priority Areas 1.1, 1.2 and 1.4

Applicants in these priority areas must also document a firmly established and quantifiable performance record that shows the following:

- The ability to implement major activities such as business development, commercial development, physical development, or financial services;
- Successful working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;

- A sound asset base and organizational structure in terms of (a) net worth, (b) management stability, and (c) organizational capability;
- An ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities and other benefits to community residents, and impact on community-wide economic problems and needs;
- Sound administrative and fiscal systems and controls, and the ability to establish and maintain partnerships with the private sector in such forms as financial support, volunteerism or executives on loan.

(ii) *Staff Skills, Resources and Responsibilities.* The application must fully describe (e.g. a resume or position description) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project.

The application must include statements regarding who will have the responsibilities of the chief executive officer, who will be responsible for grant coordination with OCS, and how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

d. *Work program.* The application must contain a detailed and specific work program, or Business Plan where appropriate, (to include an Executive Summary) that is both sound and feasible. (For those applicants submitting proposals under Sub-Priority Areas 1.1, and 1.2, the Business Plan will be accepted in lieu of the work program.) The Executive Summary should not exceed five pages. This summary must address the program principles within this announcement and document that the proposed project will have national or regional significance. The work program will be evaluated according to Criteria III, IV, and V set forth in Part D of this announcement: Project Implementation, Significant and Beneficial Impact, and Public-Private Partnerships.

Projects funded under this announcement must be designed to produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. The OCS grant funds, in combination with private and/or other public resources, must be

targeted into low-income communities, distressed communities, and/or designated enterprise zones. Projects must be designed to achieve the specific program priority area objectives defined in this Program Announcement.

It must set forth realistic quarterly time targets by which the various work tasks will be completed. It must identify critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained despite such potential problems.

If an applicant is proposing a project which will affect a property listed in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF-424B, Item 13 for additional guidance.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for funding consideration.

Applicable to Sub-Priority Areas 1.1, and 1.2

Applications submitted under Sub-Priority Areas 1.1, and 1.2 which propose to use the requested OCS funds to make an equity investment or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of the OCS funds, must include a written agreement between the community development corporation and the recipient of the grant funds which contains all of the elements listed in Part B under the appropriate Priority Area.

Applications submitted under Sub-Priority Areas 1.1, and 1.2 must include a complete Business Plan where it is appropriate to the project/venture. An application that does not include a Business Plan where one is appropriate may be disqualified and returned to the applicant.

In some cases a Business Plan may not be required under the Priority Areas. All applicants under the Priority Areas, however, must nevertheless submit the information which is required in

Sections 7 through 10, as set forth below.

The Business Plan is one of the major components that will be evaluated by OCS to determine the feasibility of an economic development project. It must be well prepared and address all the major issues noted herein.

The following guidelines show what should be included in order to produce a complete and professional Business Plan which makes an orderly presentation of the facts necessary to be judged responsive to the program announcement.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

The Business Plan should include the following:

1. *The business and its industry.* This section should describe the nature and history of the business and provide some background on its industry.
 - a. *The Business:* as a legal entity; the general business category;
 - b. *Description and Discussion of Industry:* Current status and prospects for the industry;
2. *Products and Services:* This section deals with the following:
 - a. *Description:* Describe in detail the products or services to be sold;
 - b. *Proprietary Position:* Describe proprietary features if any of the product, e.g. patents, trade secrets;
 - c. *Potential:* Features of the product or service that may give it an advantage over the competition;
3. *Market Research and Evaluation:* This section should present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition;
 - a. *Customers:* Describe the actual and potential purchasers for the product or service by market segment.
 - b. *Market Size and Trends:* State the size of the current total market for the product or service offered;
 - c. *Competition:* An assessment of the strengths and weaknesses of competitive products and services;
 - d. *Estimated Market Share and Sales:* Describe the characteristics of the product or service that will make it competitive in the current market;
4. *Marketing Plan:* The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan

should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. *Design and Development Plans:* If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

6. *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. *Management Team:* The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills, and experience in doing what is proposed. This section must include a description of: the key management personnel and their primary duties; compensation and/or ownership; the organizational structure; Board of Directors; management assistance and training needs; and supporting professional services.

8. *Overall Schedule:* A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, and production and operations. Sufficient detail should be included to show the timing of the primary tasks required to accomplish each activity.

9. *Critical Risks and Assumptions:* The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture.

10. *Community Benefits:* The proposed project must contribute to economic, community and human development within the project's target

area. A section that describes and discusses the potential economic and non-economic benefits to low-income members of the community must be included as well as a description of the strategy that will be used to identify and hire individuals being served by public assistance programs and how linkages with community agencies/organizations administering the JOBS program will be developed. The following project benefits must be described:

Economic

- Number of permanent jobs that will be created for low-income people during the grant period;
- Number of jobs to be created for low-income people that will have career development opportunities and a description of those jobs
- number of jobs that will be filled by individuals on public assistance;
- Ownership opportunities created for poverty-level project area residents;
- Specific steps to be taken to promote the self-sufficiency of program participants. Other benefits which might be discussed are:

Human Development

- New technical skills development and associated career opportunities for community residents;
- Management development and training.

Community Development

- Development of community's physical assets;
- Provision of needed, but currently unsupplied, services or products to community;
- Improvement in the living environment.

11. *The Financial Plan:* The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the first three years of the business' operation:

- a. Profit and Loss Forecasts—quarterly for each year;
- b. Cash Flow Projections—quarterly for each year;
- c. Pro forma balance sheets—quarterly for each year;
- d. Initial sources of project funds;
- e. Initial uses of project funds; and
- f. Any future capital requirements and sources.

Applicable to Sub-Priority Area 1.4 Only

Applicants in this priority area must document its experience and capability to provide assistance and leadership in two or more of the following areas:

- Business/Development;
- Micro-Entrepreneurship Development;
- Commercial Development;
- Organizational and Staff Development;
- Board Training;
- Business Management, including Strategic Planning and Fiscal Management;
- Finance, including Business Packaging and Financial/Accounting Services, and/or
- Regulatory Compliance including Zoning and Permit Compliance

The applicant must document staff competence or the accessibility of third party resources with proven competence. If the work program requires the significant use of third party (consultant/contractor) resources, those resources should be identified and resumes of the individuals or key organizational staff provided. Resumes of the applicant's staff, who are to directly provide assistance, should also be included. The applicant must document successful experience in the mobilization of resources (both cash and in-kind) from private and public sources. The applicant must also clearly state how the information learned from this project may be disseminated to other interested grantees.

Applicable to Sub-Priority Area 2.1 Only

Each applicant must include a full discussion of the project including the following information:

- Basic Housing Data for Targeted Area.* Information on the number of sub-standard housing units available to low-income people in the target area, deficiencies of the housing units to be repaired, i.e., lack of or inadequate plumbing, upgrading of electrical systems, etc., new construction inventory, property values, rents and mortgage rates. While specific census data may be included, this information must be project specific. Applicants must show that other Federal programs do not exist to address the rehabilitation needs of the targeted area.
- Priorities.* Provide a rationale for the strategies and priorities for which OCS support is requested.
- Participant Application Process.* A description of the participant application process including: (a) Verification of participant need and income eligibility, (b) proposed diagnostic repair forms and contract bid procedures (where applicable), and (c) completion verification and quality workmanship assurance procedures.

—*Types of Work to be Performed.* The quantitative and qualitative measures in the work plan should reflect the types of work to be performed, e.g. (a) technical assistance and training for each proposed organization/community; and/or (b) repairs or rehabilitation or construction work, noting which types of work will be done in order to bring properties up to minimum housing standards, inspection procedures and construction schedules.

Applications proposing to repair or rehabilitate low-income rental housing (see Part B, Sub-Priority Area 2.1, regarding restrictions) must state the current rents for the units in question as well as what rents will be charged for the rehabilitated units. Applicants should also state the number of low-income residents who will be helped to purchase or acquire adequate housing.

—*Job Creation.* Data regarding the number of direct jobs that will be created in the proposed project, noting the number of low-income residents that will be trained and/or placed in these jobs.

—*Public-Private Partnership.* A description of the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project and the amount of dollars which will be mobilized.

Applicable to Sub-Priority Area 2.2

Each applicant must include a full discussion of how the proposed use of funds will enable low-income rural communities to develop the capability and expertise to establish and maintain affordable, adequate and safe water and waste water systems. Applicants must also discuss how they will disseminate information about water and waste water programs serving rural communities, and how they will better coordinate Federal, State, and local water and waste water program financing and development to assure improved service to rural communities.

Among the benefits that merit discussion under this sub-priority area are: The number of rural communities to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by applicant-supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant-supported treatment systems (all of the above may be expressed in terms of equivalent connection units); the increase in local capacity in engineering and other areas

of expertise; and the amount of non-discretionary program dollars expected to be mobilized.

Applicable to Sub-Priority Areas 3.1 and 3.2

Each applicant must include a full discussion of the proposed project and how it will address one or more farmworker needs as described in Part B.

Among the benefits which merit discussion under these priority areas are: The number of farmworkers who are expected to improve their agricultural skills and thus improve their agricultural employment situation; the number of farmworkers and/or their dependents who will be afforded an opportunity to continue their formal education; the number of farmworkers/families who will receive crisis nutritional relief, emergency health and social services referrals and assistance, and assistance in the development of self-help systems of food production; the number of farmworkers who are expected to gain longer term or permanent private sector employment in areas outside agriculture; the number of farmworkers who will receive help in the areas of housing; the number of housing units to be repaired or rehabilitated; the degree and kind of such help; the amount of non-Discretionary program dollars expected to be mobilized, and the degree of private sector involvement that will be utilized in developing and carrying out projects funded under this Announcement.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total financial participation from the award recipient.

General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, are subject to the provisions of 45 CFR parts 74 and 92.

Grantees will be required to submit semi-annual progress and financial reports (SF-269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92

and OMB Circular A-128 or A-133. If an applicant will not be requesting indirect costs, it should anticipate in its budget request the cost of having an audit performed at the end of the grant period.

Section 319 of Public Law 101-121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their sub-tier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) the law requires recipients and their sub-tier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of nonappropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their sub-tier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Discretionary Grants Program.

Dated: April 26, 1994.

Donald Sykes,
Director, Office of Community Services.

Attachment A

1994 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII AND THE DISTRICT OF COLUMBIA)

Size of family unit	Poverty guideline
1	\$7,360
2	9,840

1994 POVERTY INCOME GUIDELINES
FOR ALL STATES (EXCEPT ALASKA
AND HAWAII AND THE DISTRICT OF
COLUMBIA—Continued

Size of family unit	Poverty guideline
3	12,320
4	14,800
5	17,280
6	19,760
7	22,240
8	24,720

For family units with more than 8 members, add \$2,480 for each additional member.

POVERTY INCOME GUIDELINES FOR
ALASKA

Size of family unit	Poverty guideline
1	\$9,200
2	12,300
3	15,400
4	18,500
5	21,600
6	24,700
7	27,800
8	30,900

For family units with more than 8 members, add \$3,100 for each additional member.

POVERTY INCOME GUIDELINES FOR
HAWAII

Size of family unit	Poverty guideline
1	\$8,470
2	11,320
3	14,170
4	17,020
5	19,870
6	22,720
7	25,570
8	28,420

For family units with more than 8 members, add \$2,850 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

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Attachment B

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <i>only</i> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B — BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
l. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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Standard Form 424A (4 88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(e) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8	\$	\$	\$	\$	\$
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	\$
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year				4th Quarter
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
13. Federal	\$	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(e) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	
17.					
18.					
19.					
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:					
22. Indirect Charges:					
23. Remarks					

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Attachment C

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary
Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Attachment D

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Attachment E

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

Check if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

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Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280-1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682-1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866-2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736-3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, N.W., Suite 500, Washington, DC 20005, Telephone (202) 727-6551

Florida

Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399-0001, Telephone (904) 488-8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656-3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782-1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232-5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281-3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564-2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289-3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Telephone (301) 225-4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727-7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373-7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960-2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751-4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687-4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271-2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625-0803, Telephone (609) 292-6613
Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, Room 609, Trenton, New Jersey 08625-0803, Telephone (609) 292-9025.

New Mexico

George Elliott, Deputy Director, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827-3640, FAX (505) 827-3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474-1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603-8003, Telephone (919) 733-7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505-0170, Telephone (710) 224-2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266-0411, Telephone (614) 466-0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656
Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3213

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538-1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266-0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777-7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774-0750.

Attachment H—Certification Regarding Lobbying*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any

Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts

under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of

Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Title

Organization

Date

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Attachment I

The following DHHS regulations apply to all applicants/grantees under the Discretionary Grants Program:

Title 45 of the *Code of Federal Regulations*:

- Part 16—Procedures of the Department Grant Appeals Board
- Part 74—Administration of Grants (non-governmental)
- Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
 - Sections 74.62(a) Non-Federal Audits
 - 74.173 Hospitals
 - 74.174(b) Other Nonprofit Organizations
 - 74.304 Final Decisions in Disputes
 - 74.710 Real Property, Equipment and Supplies
 - 74.715 General Program Income
- Part 75—Informal Grant Appeal Procedures
- Part 76—Debarment and Suspension form Eligibility for Financial Assistance
 - Subpart F—Drug Free Workplace Requirements
- Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
- Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs

Part 84—Non-discrimination on the Basis of Handicap in Programs

Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)

Part 93—New Restrictions on Lobbying

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J—Checklist for Use in Submitting OCS Grant Applications (Optional)

The application should contain:

1. A completed, signed SF-424, "Application for Federal assistance". The letter code for the priority area e.g., UR) should be in the lower right hand corner.
2. A completed "Budget Information—Non-Construction" (SF-424A);
3. A signed "Assurance—Non-Construction" (SF-424A);
4. A Project Abstract
5. A Project Narrative beginning with a Table of Contents that describes the project in the following order:

(a) Eligibility Confirmation

(b) Analysis of Need (except for Sub-Priority 1.4)

(c) Organizational Experience and Staff Responsibilities

(d) Work Program (including Executive Summary)

6. Appendices, including By-Laws; Articles of Incorporation, proof of non-profit status where applicable; resumes, written agreements re grants, coordination with JOBS, etc.; Single Point of Contact comments (where applicable); certification regarding anti-lobbying activities; and a disclosure of lobbying activities.

7. A signed copy of "Certification Regarding Anti-Lobbying Activities."

8. A completed "Disclosures of Lobbying Activities", if appropriate; and

9. A self-addressed mailing label which can be affixed to a notice to acknowledge receipt of application.

The application should not exceed a total of 50 pages for applications submitted under sub-priority areas 1.1 and 1.2 and 30 pages for all applications submitted under the other subpriority areas. It should include one original and four identical copies, printed on white 8½ by 11 inch paper only. Applications should be two holed punched at the top center and fastened with a compressor slide paper fastener or a binder clip. All pages should be numbered.

[FR Doc. 94-10914 Filed 5-6-94; 8:45 am]

BILLING CODE 4184-01-P

Federal Register

Monday
May 9, 1994

Part III

Library of Congress

Copyright Office

37 CFR Parts 251, 252, etc.
Copyright Arbitration Royalty Panels;
Rules and Regulations; Interim Rule

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 251, 252, 253, 254, 255, 256, 257, 258, 259, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310 and 311

[Docket No. RM 94-1A]

Copyright Arbitration Royalty Panels; Rules and Regulations

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing interim regulations to revise the rules and regulations of the former Copyright Royalty Tribunal adopted by the Office on December 22, 1993. The Office is seeking comments on these interim rules, which will govern the conduct of royalty distribution and rate adjustment proceedings prescribed by the Copyright Royalty Tribunal Reform Act of 1993 until final regulations are adopted.

DATES: Effective May 9, 1994.

Written comments should be received by June 15, 1994. Reply comments should be received by July 15, 1994.

ADDRESSES: Fifteen copies of written comments should be addressed, if sent by mail, to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, room LM-407, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, U.S. Copyright Office, Library of Congress, Washington, DC 20540, (202) 707-8380.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal Reform Act of 1993, Public Law 103-198, eliminated the Copyright Royalty Tribunal (CRT) and replaced it with a system of ad hoc Copyright Arbitration Royalty Panels (CARPs), administered by the Librarian of Congress and the Copyright Office, for purposes of distributing royalties and adjusting royalty rates for the various compulsory licenses and statutory obligations of the Copyright Code. The CRT Reform Act, which was effective immediately upon its enactment, directed the Librarian and the Office to adopt the rules and regulations of the CRT found in chapter 3 of 37 CFR, 17 U.S.C. 802(d), and provided that the CRT's regulations were to remain in effect until the Librarian adopts "supplemental or

superseding regulations." The Office adopted the CRT's rules and regulations on an interim basis on December 22, 1993, and notified the public that it intended to begin a rulemaking proceeding to revise and update those rules. 58 FR 67690 (1993). Today's interim regulations are the latest result of that rulemaking proceeding.

I. Notice of Proposed Rulemaking

On January 18, 1994, the Copyright Office of the Library of Congress published a Notice of Proposed Rulemaking (NPRM) establishing a new set of rules and regulations intended to revise those of the former CRT. The NPRM contained long and substantial revisions required by the dual structure of the royalty rate adjustment and distribution system created by the CRT Reform Act. Instead of a single administrative body (the CRT), the new system features a division of authority. The Librarian and the Copyright Office are responsible for doing the preliminary work necessary for the operation of both the distribution and the rate adjustment proceedings, including the organization and selection of the CARPs. The CARPs are given sole authority to determine the appropriate distribution of royalties and the royalty rates. Their determinations are later reviewed by the Librarian of Congress. Since the CRT's rules were not designed to implement a system such as this, we were obliged to institute this rulemaking proceeding.

The NPRM proposed removal of parts 301 through 311 of chapter III of 37 CFR and creation of subchapters A and B of chapter II. Subchapter A comprises the Copyright Office's rules and procedures, consisting of parts 201-211, which remain unchanged. New subchapter B, which is the subject of this rulemaking, comprises parts 251-259, and is devoted entirely to the rules and procedures of the CARPs. In the NPRM, part 251, the Copyright Arbitration Royalty Panel Rules of Procedure, consisted of proposed regulations to govern the organization of the CARPs, access to CARP meetings and records, rules governing the conduct and course of proceedings, and procedures applicable to rate adjustments and distributions. The NPRM also reserved a subsection for standards of conduct for arbitrators, and sought comment as to what the appropriate ethical and financial standards should be.

New part 252 proposed revised rules for the filing of claims to cable copyright royalties, modeled after the system used by the CRT for the filing of digital audio (DART) royalty claims. Parts 253 to 256—Use of Certain Copyrighted Works

in Connection With Noncommercial Educational Broadcasting; Adjustment of Royalty Rate for Coin-Operated Phonorecord Players; and Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords—proposed only technical changes to the former CRT's rules. Like part 252, part 257—Filing of Claims to Satellite Carrier Royalty Fees—was modeled after the royalty claim procedures used by the CRT for DART. Finally, parts 258 and 259—Adjustment of Royalty Fee for Secondary Transmissions by Satellite Carriers and Filing of Claims to Digital Audio Recording Devices and Media Royalty Payments—contained only minor technical amendments. Since the CRT Reform Act eliminated the jukebox compulsory license, 17 U.S.C. 116, and replaced it with a provision for negotiated licenses, the NPRM proposed elimination of the CRT's rules governing the filing of jukebox claims (formerly part 305 of 37 CFR).

Following issuance in the *Federal Register* of the NPRM, the Copyright Office invited the interested parties to a public meeting to discuss the proposed regulations concerning rules and procedures for Copyright Arbitration Royalty Panels. The public meeting was held on February 1, 1994, at Hearing room 921 of the Office of the former Copyright Royalty Tribunal. More than 50 individuals attended; comments were noted in an unofficial transcript and became part of the Administrative Record.¹ Written comments on the proposed rulemaking were due on or before February 15, 1994. Both oral and written comments are reflected in our current proceeding.

The Office received a total of 11 comments.² Many parties filed joint comments, and some of the joint commentators also filed separate comments. The commentator groups for each of the 11 comments were as follows:

Recording Industry Association of America, Inc and the Alliance of Artists and Recording Companies, Inc. (referred to collectively as "RIAA/AARC");

¹ Individuals wishing to inspect the unofficial transcript of this meeting may contact the Copyright General Counsel's Office at (202) 707-8380.

² The first ten comments were filed on time. The 11th comment, from the Public Broadcasting Service, was filed April 21, 1994, more than two months late, and included a motion for leave to file the comment. The Copyright Office sees no reason why consideration of the comment should be denied, and we are therefore granting PBS' motion and considering the views expressed in the comment for this rulemaking.

National Music Publishers Association and the Harry Fox Agency (collectively "Music Publishers");
 Electronic Industries Association ("EIA");
 American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc. (collectively "Performing Rights Societies");
 United Video Division of United Video Satellite Group, Inc. ("United Video");
 National Cable Television Association ("NCTA");
 Program Suppliers, Joint Sports Claimants, the National Association of Broadcasters, Public Broadcasting Service, American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., the Devotional Claimants, the Canadian Claimants, and National Public Radio (collectively "Copyright Owners");³
 Program Suppliers ("Program Suppliers");
 Joint Sports Claimants, the National Association of Broadcasters, Public Broadcasting Service, the Devotional Claimants, the Canadian Claimants, and National Public Radio (collectively "Certain Copyright Owners");
 Gospel Music Coalition and Copyright Management, Inc. (collectively "Gospel Music");
 Public Broadcasting Service ("PBS").

II. CRT Precedent and Pending Matters

The NPRM addressed a significant preliminary issue: How the Copyright Office should deal with matters that were pending before the CRT at the time of its elimination. The Office stated that it was "of the firm opinion that it is not the successor agency or office to the Copyright Royalty Tribunal" and that it was therefore making a "preliminary finding that all proceedings pending

before the Tribunal at the time of its elimination were terminated at that time." 59 FR 2551 (1994). Parties wishing to have pending matters considered by either the Office, or the CARPs, or both, would have to resubmit the matters to the Office. *Id.*

The Office went on to discuss the precedential effect, if any, of orders and rulings of the Tribunal issued in proceedings that were pending before the Tribunal at the time of its termination. We concluded:

The Office has no intention of questioning or reopening matters decided by the former Tribunal with respect to ongoing proceedings. However, we understand that the termination of pending Tribunal proceedings and the requirement of new filings will likely raise again some of the issues previously decided by the Tribunal. The Copyright Office of the Library of Congress makes a preliminary finding that, while we will look to the Tribunal's decisions and orders for guidance, neither the Office nor the Copyright Arbitration Royalty Panels are legally bound by those decisions. All legal issues related to proceedings pending before the Tribunal at the time of its elimination may therefore be resubmitted to the Copyright Office and, where appropriate, to the Arbitration Panels for consideration. *Id.*

We also noted in a footnote to this paragraph:

The Copyright Office acknowledges that it is of course bound by rate adjustments and distributions that the Tribunal had conducted and concluded before its elimination. Thus, for example, the Office will not entertain any petitions to reexamine cable distributions for years earlier than 1990.

Id. at fn. 1.

These statements concerning the refiling of pending matters, and the possible effect as legal precedent of CRT rulings in pending proceedings, drew comments from two parties. The Copyright Owners favored the Office's position that all pending CRT matters terminated with enactment of the CRT Reform Act and would have to be refiled with the Office, the CARPs, or both. Copyright Owners, comment at 2. They noted that the largest single matter to be affected by this policy decision is the 1990 cable distribution, and asked that the parties to that proceeding be allowed to resubmit their cases with the Copyright Office, but with two qualifications. First, according to the Copyright Owners, the "parties should be permitted to comment on the appropriate dates for submittal of the 1990 cases and the start of the 1990 hearing before a panel." *Id.* at 3. Second, they asked that the parties in the 1990 distribution not be restricted to evidence submitted to the CRT: in other

words, that they be allowed to update their cases in their filings with the Office rather than being bound by what they previously submitted to the Tribunal. *Id.* at 3-4.

On the issue of rulings by the CRT in pending proceedings, the Copyright Owners agreed in principle with the Office's preliminary finding that these CRT rulings are not binding, but suggested "slight changes to the phrasing of the discussion." *Id.* at 4. According to the Copyright Owners, the NPRM was unclear as to whether the Office's statement—that neither it nor the CARPs are bound by CRT rulings—applied only to matters pending at the time of the CRT's termination, or whether it was intended to apply to all CRT decisions. If the language in the NPRM was intended to refer to all CRT rulings, then the Copyright Owners argued that it is contrary to the intent and language of 17 U.S.C. 802(c). *Id.* at 4-5.

RIAA/AARC also questioned the NPRM's statement regarding treatment of CRT precedent. Their comments suggest that they interpret the NPRM as asserting that the Office and the CARPs are free to ignore CRT precedent in all cases. RIAA/AARC, comment at 1. RIAA/AARC appears to be arguing that any and all decisions of the CRT—not only those in concluded matters but also those in matters pending on or before December 17, 1993—represent legal precedent that is binding on the Office and the CARPs. *Id.* at 2.

On reexamination of the NPRM, and especially in light of these comments, we have to admit that our discussions both of the refiling of pending matters and the legal effect of CRT decisions were unclear. These are extremely important issues, and we will try to clear up the confusion here.

First of all, the Office restates its "firm opinion that it is not the successor agency or office to the Copyright Royalty Tribunal." 59 FR 2551 (1994). Second, we adhere to the policy determination that any proceeding still pending before the CRT on the date of its elimination, December 17, 1993—whether it involved rate adjustment, distribution, rulemaking, or administration—terminated as of that date. The legal effect of that termination is that the proceeding has ceased to exist, and that any rulings or decisions made by the Tribunal during the proceeding are null and void and without any binding effect, as precedent or otherwise, on the Copyright Office, the CARPs, or the parties.

In cases where a proceeding was terminated by operation of the CRT Reform Act on December 17, 1993, the

³ The parties comprising the Copyright Owners derive their names from their "Phase I" categories in the former Tribunal's cable royalty distribution proceedings. The Program Suppliers are more than 100 producers and distributors of syndicated series, movies, and television specials represented by the Motion Picture Association of America. The Joint Sports Claimants consist of Major League Baseball, the National Basketball Association, the National Hockey League and the National Collegiate Athletic Association. NAB represents claiming television and radio stations. PBS represents claiming member television stations and producers of public television programs. ASCAP, BMI and SESAC are three performing rights societies, also known as the Music Claimants, representing their members and affiliates. The Devotional Claimants consist of several producers and syndicators of religious programming. The Canadian Claimants represent Canadian programs broadcast by Canadian television stations. NPR represents its claiming member radio stations.

parties will be obliged to refile in the Copyright Office in accordance with these new CARP regulations, and present their arguments and, as a general rule, their evidence,⁴ as if there had never been a proceeding before the CRT. Parties to the 1990 cable distribution are not bound by their earlier filing with the CRT, and may refile their cases and evidence as they see fit.⁵

Section 802(c) of the Copyright Code requires the CARPs to "act on the basis of * * * prior decisions of the Copyright Royalty Tribunal." We emphasize, however, that this requirement applies only to proceedings that were concluded by the Tribunal. For example, CRT rulings from the 1989 cable distribution have precedential effect because the 1989 distribution is a concluded proceeding, but rulings made during the 1990 cable distribution are without precedential effect.

We should add that, although rulings and orders from proceedings that were pending before the CRT at the time of its elimination do not constitute binding precedent, the Copyright Office will review those rulings and orders for information and guidance if the same issues arise during the course of a refiled proceeding, and will call them to the attention of the CARP.

There is an important distinction to be made here. What we have said so far applies to cases where a proceeding was underway at the CRT before December 17, 1993, except for claims to royalties filed with the CRT before its elimination. Royalty claims are required to be filed during specific time periods set by the Copyright Code, and any valid claims filed with the CRT before the statutory deadlines, and still pending on December 17, 1993, are unaffected by the new law. For example, the Code requires claims for DART royalties to be filed in January and February of each year with respect to royalties from the preceding calendar year. 17 U.S.C. 1007(a)(1). Claims to 1992 royalties had to be filed with the CRT by February 28, 1993. It is not now necessary to refile those claims with the Copyright Office, even though 1992 DART royalties have

yet to be distributed. The Copyright Office has received from the CRT all claims to 1992 DART royalties that had been filed with the Tribunal, and it is therefore unnecessary, and without legal effect, to refile those claims with the Office.

Finally, in connection with DART filings, an issue raised by one of the commentators brings up questions related to those we have been discussing. The comment of the Performing Rights Societies contests the validity of the rule proposed in § 259.2 of the NPRM, which would require a performing rights society " * * * to obtain from its members or affiliates separate specific and written authorization signed by members, affiliates or their representatives to file claims to the Musical Works Fund * * *". Performing Rights Societies, comment at 1. This rule was promulgated by the CRT on October 18, 1993, and, as directed by the CRT Reform Act, the Office adopted it in its December 22, 1993, regulation. 58 FR 67690 (1993). Our NPRM did not propose to amend the regulation beyond renaming it and assigning it a new section number (§ 259.2). The Performing Rights Societies filed a petition for reconsideration of the rule with the CRT on November 3, 1993, before the Tribunal was terminated, and are now asking for Copyright Office consideration of the question in the context of this rulemaking. Gospel Music has filed an opposition. Gospel Music, comment at 1-3.

Although referred to as a "comment," the letter from the Performing Rights Societies is more in the nature of a petition to address the issue anew. They say that they wish "to petition to reopen the Tribunal's former rulemaking proceeding," and to have the matter addressed by the Copyright Office. The CRT had adopted a rule contrary to the Performing Rights Societies' petition; if the Societies had not petitioned the CRT for reconsideration, or if the CRT had acted one way or the other on the reconsideration request before it expired, we would consider the matter of the petition settled. As things stand, however, the petition for reconsideration was a pending CRT matter, and the Copyright Office will consider the Performing Rights Societies' "comment" as a separate petition for rulemaking, not as part of this rulemaking proceeding. The "comment" of Gospel Music will be treated as an opposition to that petition. At a later date we will publish notice of a separate rulemaking in response to the Performing Rights Societies' petition, and will invite interested parties to

comment at that time. Section 259.2, as adopted in 58 FR 67690 (1993) and renamed and renumbered in this rulemaking, remains in effect until the conclusion of the separate proceeding.

III. Interim Regulations

Today's interim regulations reflect a comprehensive review of the entire body of the former Tribunal's rules and regulations, and a thorough analysis of the new procedures needed to implement the bifurcated system of ad hoc arbitration panels administered by the Librarian of Congress. The comments included a number of suggestions and proposed amendments, most of which were constructive and many of which we have adopted. In general the commentators were supportive of the Office's overall approach and most of the language in the NPRM.

It was the consensus of the parties at the February 1, 1994, public meeting that a reply period for comments on the proposed rules would be desirable. At the time of the public meeting we thought it would be impossible to provide periods for reply comments addressed either to the responses to the NPRM or to these interim regulations; this was because the CARP infrastructure must be in place before proceedings can begin, and one of the deadlines for starting DART distribution proceedings was supposed to fall on March 30, 1994.⁶ On further consideration, however, the Office concluded that it would be virtually impossible to carry out the necessary procedures for appointing arbitrators before that date, and we issued a notice postponing the deadline, see 59 FR 9773 (1994) (postponing time period for declaration of controversy with respect to 1993 DART royalties to June 30, 1994). Even so, there is still the need to implement the CARP rules immediately, and to begin the screening and selection of potential arbitrators.

In order to get revised regulations into effect immediately and, at the same time, to offer an opportunity to see how they work in practice and to elicit meaningful comments and suggestions, the Office is adopting today's regulations on an interim basis.⁷ All

⁴ A question was raised in the February 1, 1994, meeting as to the possibility, when the 1990 cable distribution proceedings are initiated by a CARP, of incorporating by reference, rather than completely refile, one or more long documents already filed by a party in the suspended CRT proceedings. We agree that, to avoid wasteful and needless duplication, the CARP should have the prerogative to permit incorporation by reference.

⁵ As recommended in the comments of the Copyright Owners, we will at a later date invite the parties to the 1990 cable distribution to comment on when the proceeding should commence before the CARP.

⁶ Sec. 1007(b) of the Copyright Code states that, "Within 30 days after the period established for the filing of claims [January-February] * * *, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalties * * *", and sec. 1007(c) states that, if a controversy exists, "the Librarian shall * * * convene a copyright arbitration royalty panel to determine the distribution of royalty payments."

⁷ These interim regulations consist of the earlier "interim regulations" adopted by the Copyright

proceedings before the Office and the CARPs will be governed by the December 22, 1993, interim rules as amended by these interim rules, unless and until they are further amended or superseded. Comments are due on June 15, 1994, and reply comments on July 15, 1994, whereupon the Office plans to make another comprehensive review and analysis before adopting final regulations.

The Librarian and the Office are committed to creating the fairest, most efficient possible system for adjusting royalty rates and distributing royalties. We believe that the rules and procedures adopted today will work, but during the coming months we will continue to monitor the CARP experience very closely and to identify any problems that need solving and any improvements that can be made.

The following is a section-by-section summary of the amended regulations, together with a discussion of the applicable comments on the corresponding provisions of the NPRM.

(a) *Part 251—Copyright Arbitration Royalty Panels Rules of Procedure*

Part 251 contains most of the rules and procedures governing the operation of the CARPs, and therefore received the greatest number of observations and suggestions from the commentators.

(1) *Status of certain DART proceedings.* As a preliminary matter, it is important to consider the scope of part 251 with respect to digital audio proceedings under chapter 10 of the Copyright Code. It is the Office's reading of the CRT Reform Act that neither of the following is to be a CARP proceeding:

(i) the proceeding raising the maximum rate for digital audio tape royalties which, under 17 U.S.C. 1004(a)(3), is to be handled solely by the Librarian;

(ii) the arbitration proceeding under 17 U.S.C. 1010 to determine if a digital audio recording or interface device is subject to royalty payments. We reach this conclusion based on the 1993 amendments to section 801 of the Copyright Code. Former section 801(b)(4), which assigned to the Tribunal the authority to distribute DART royalties, and "to carry out its other responsibilities under chapter 10," was deleted; except for DART royalty distribution, which reappears in the new section 801(b)(3), that former authority was not reassigned to the Copyright Arbitration Royalty Panels. For these reasons the Office has not

proposed any regulations in this rulemaking as to the raising of the DART maximum royalty payment or the status of a DART device. These are matters that will be covered later in separate DART regulations.

We invite comments from the parties on the following:

Is our interpretation concerning the status of DART proceedings under the CARP legislation correct?

If it is correct, to what extent does the Office have authority to adopt regulations governing standards of conduct in DART proceedings?

(2) *Organization of Part 251.* Part 251, which tracks the original format of the former Tribunal's regulations, is divided into seven subparts, identified as subparts A through F.

Subpart A, entitled "Organization," describes the composition and selection process for the CARPs. Subparts B and C—"Public Access to Copyright Arbitration Royalty Panel Meetings" and "Public Access to and Inspection of Records"—remain virtually the same as the former Tribunal's rules, with only a few minor technical amendments. Subpart D, "Standards of Conduct," consists of a completely new set of rules prescribing the financial and ethical requirements for arbitrators, and governs *ex parte* communications, billing, sanctions for misconduct, and other matters involving ethical standards. Subpart E, "Procedures of Copyright Arbitration Royalty Panels," prescribes the procedures to be followed by the CARPs in conducting proceedings, including those governing submission of evidence, conduct of hearings, reports of the CARPs, and orders of the Librarian. Subparts F and G—"Rate Adjustment Proceedings" and "Royalty Fee Distribution Proceedings"—provide certain additional requirements inherent in rate adjustment and distribution proceedings, and contain only a few changes of the former Tribunal's rules.

The following summarizes the additions and changes in the various subparts of part 251.

(b) *Subpart A—Organization*

As the NPRM explained, subpart A was in need of complete revision because of the differences between the statutory organization of the CRT and that of the CARPs. In addition to the changes proposed in the NPRM, these interim regulations incorporate additional revisions based on the comments and our own further review.

(1) *Official address.* The Copyright Office has secured a special Post Office box for receiving mail relating to the CARPs and any other matters arising

under subchapter B of chapter II of this title (37 CFR). As the NPRM said, establishment of a single official address is important, since arbitration proceedings will not necessarily take place at a single location, within the Library of Congress or elsewhere. There may sometimes be an incentive for parties to deliver filings directly to the actual location where a CARP is meeting, but, for the reasons summarized in the NPRM, we believe it would be a mistake to allow official filings to go to locations different from the mailing address specified in these regulations.

Therefore, all filings required by this subchapter, if sent by mail, should be marked for delivery to the official address contained in § 251.1. The same address should be used for all correspondence or inquiries concerning the CARPs, distributions of royalties, rate adjustments, and other matters arising under this subchapter B. Note that, under § 251.44, the CARPs are required to establish procedures under which filings may be delivered directly to them, as long as a copy is also delivered to the official address.

(2) *Purpose of the CARPs.* Section 251.2 describes the royalty distribution and rate adjustment responsibilities of the CARPs with respect to the various compulsory licenses and statutory obligations established under the Copyright Code.* The Copyright Owners requested deletion of the word "television" from the phrase "cable television" in subsection (e), pointing out that fee distributions for cable retransmissions under sections 111 of the statute cover radio as well as television distant signal carriage. We have corrected subsection (e) and have amended later references to "cable television" to read simply "cable."

(3) *List of arbitrators—(i) The NPRM proposals.* To facilitate the process for selecting arbitrators, the NPRM proposed creation of a yearly list of qualified arbitrators obtained from professional arbitration associations or organizations. The association or organization would supply the names of

*It is significant that, while adjustment of royalty rates for the cable compulsory license is one of the duties of the CARPs listed in § 251.2, there is no similar provision for the satellite carrier compulsory license. This is because the current satellite rates were adjusted in 1992, before enactment of the CRT Reform Act, and the satellite carrier license is due to expire on December 31, 1994. Congress is currently moving legislation to extend the duration of the license and provide for another arbitrated adjustment of the royalty rates. The Office anticipates that, when and if the pending satellite bill is enacted, it will include a provision making the satellite arbitration a CARP proceeding. In that event we will amend these rules to reflect the legislative changes.

arbitrators meeting the qualifications set out in § 251.5, together with a brief summary of each person's educational and employment history, qualifications, and "any other information which the professional arbitration association or organization may consider relevant." The Librarian would then publish the list of qualified candidates in the **Federal Register**, and this would constitute the master list from which all selections for CARPs would be drawn for the calendar year.

(ii) *Comments of copyright owners.* The Copyright Owners recommended several changes to § 251.3 as proposed in the NPRM. Copyright Owners, comment at 16-19.

First, they suggested that the Copyright Office solicit names of qualified arbitrators from at least five professional arbitration associations or organizations, including organizations that list former judges. Although, according to their predictions, the cost of an arbitration organization's list will be approximately \$1,000, they "think that it is appropriate for a reasonable amount of money to be spent compiling these lists." *Id.* at 16. They also recommended consultation with not-for-profit arbitration associations that make no charge for their services.

Second, the Copyright Owners suggested that the master list be confined to 50 names. This, they said, "should provide a large enough group from diverse sources to avoid repeating the solicitation process in any one year." *Id.* at 17.

Third, to assist in the control of costs of the arbitration process—a concern voiced by most of the commentators—the Copyright Owners suggested that § 251.3(a) be amended to expand the required information provided to the Librarian by professional arbitration organizations; they recommended that this information include a description of the potential arbitrators' anticipated hourly, daily, or annual fees, including per diem expense requirements. *Id.* at 18.

Fourth and finally, the Copyright Owners sought amendment of § 251.3(a)(2), which would require arbitration associations and organizations to provide "a brief summary of the member's employment history." They took the position that a brief summary would not provide adequate information upon which to formulate objections, and asked for an amendment requiring information on the potential arbitrators' "areas of expertise, general nature of clients represented and types of proceedings in which the member represented clients." *Id.* at 19.

(iii) *Changes in § 251.3.* On the whole we think the comments and suggestions on lists of arbitrators make good sense, and we have adopted most of them with modifications and additions of our own.

(A) *Change in date for first lists provided by arbitration associations.* Subsection (a) is amended by deleting "March 1, 1994" and replacing it with "on or before May 6, 1994" as the date the Office is to receive from arbitration associations the lists of qualified arbitrators in accordance with § 251.3. We are providing a longer period in which to compile this year's lists since we could not complete the process of selection by March 1, 1994, and since the beginning of DART royalty distribution has been postponed from March 30 to June 30, 1994. See 59 FR 9773 (1994).

(B) *References to "member" stricken.* In the NPRM, § 251.3 referred throughout to the persons to be included in the list as "members" of the associations and organizations submitting their names. It now seems clear that this term would be questionable or inaccurate in some cases. We have therefore substituted the phrase "persons qualified to serve as arbitrators" and the term "person" in the subsection.

(C) *Public availability of information.* The NPRM left open the question of whether the information provided by the arbitration associations or organizations under subsection (a) would be available to the public. This interim regulation has been amended to make clear that this information will be available to the public for inspection and copying, but only with respect to those potential arbitrators whose names are published in the Librarian's list.

(D) *Employment or professional affiliation history.* As suggested in the comments, we have amended subsection (a)(2) to call for more detailed information about the person's professional career and expertise. The interim regulation also calls for information about clients represented and types of proceedings in which the person has been involved, but only if that information is available to the association or organization submitting the name. We recognize that a potential arbitrator's client base is not always the type of information available to a professional arbitration association or organization, and that potential arbitrators may be reluctant to disclose that kind of information publicly. Arbitrators will be required to disclose this and other information to the Librarian as part of their confidential financial disclosure statements, see § 251.32.

(E) *Disclosures of fees to be charged.* We agree with the points made in the comments: That the costs of the arbitration process should be kept as low as possible, that arbitrators' fees will comprise a major part of the costs, and that the rates a particular arbitrator will charge are an important element in the selection process. We have therefore added a new subsection (a)(5) calling for detailed information about the arbitrator's rates for fees. This information should include the basis on which the fee is to be computed (hourly, daily, etc.), any variation on that basis (overtime, etc.), and the amount of the basic rate. (As further discussed in the preamble to § 251.38, recovery of expenses will be available only to the arbitrators coming from outside the Washington, DC area, and then will be limited to the Government per diem rate.)

(F) *Date of publication of arbitrator list.* For the reasons mentioned above in connection with subsection (a), subsection (b) now calls upon the Librarian to publish the arbitrator list after May 6, 1994, rather than after March 1. In future years the lists will be published after January 1.

(G) *Number of names on arbitration list.* The Copyright Office agrees with the comments of the Copyright Owners that the number of names on an arbitrator list should not be left completely open, but we do not agree that the regulations should set an exact number. We believe that the interests of diversity will be served by publishing a list of at least 30 arbitrators, as opposed to an exact number; this should provide the flexibility necessary to the publication of a balanced list, which in some years might require more than 30. As a practical matter, the Office will try to produce a list that generally contains about 50 names. However, since we do not anticipate circumstances that would require a list with more than 75 names, we are adopting that number as the upper limit.

(H) *Number of arbitration associations or organizations.* The Copyright Owners also asked that the regulations quantify the number of associations or organizations from which the Librarian will obtain lists of potential arbitrators, and recommended that the number be set at five. We agree that the number should be quantified and that under the statute it must be more than one, but we think five is too many. Several of the arbitration associations listed by the Copyright Owners in an appendix to their comment each represent several thousand arbitrators. The Office believes that three associations or organizations

are likely to provide more than enough eligible candidates in most cases. The rule as now written, we think, is flexible enough to provide diversity, including the presence of former judges, on the arbitrator list.

(4) *Arbitrator list: Objections.* Under § 251.4, objections to individuals on an arbitration list published in the *Federal Register* in accordance with § 251.3 may be lodged with the Librarian, but only by parties to a particular proceeding and only during a designated 30-day time period that will begin and end before the proceeding starts. In the case of rate adjustment proceedings the objection period coincides with the pre-proceeding period for consideration of possible settlements provided by § 251.63. For royalty distribution proceedings the period for objections is the same as the period for precontroversy motions and objections prescribed by § 251.45. In both cases the Librarian's notice in the *Federal Register* will set out the inclusive dates of the objection period. A party to the proceeding may lodge objections to one or more of the potential arbitrators on the Librarian's list; the grounds for each objection must be stated plainly and in detail.

(i) *Comments on objection procedures—(A) RIAA/AARC.* In their comments RIAA/AARC urged that, instead of tying the objection procedure to specific proceedings, the regulations provide for an objection period to come before publication of the annual list of arbitrators. RIAA/AARC, comment at 2-3. In their view, the proposed system of confirming objections to a period before the proceedings begin would expose the objecting party to—

* * * the risk of having arbitrators against whom they had just filed objections selected for the proceeding. This would inevitably have a chilling effect on the parties, thereby negating the purpose of the proceeding.

According to RIAA/AARC, a procedure under which potential parties to any proceedings could lodge objections to names proposed for the master list before it is published in final form would have the advantage of expanding overall participation by the parties in the process of choosing arbitrators. *Id.* at 3.

(B) *Music publishers.* The Music Publishers had an alternative objection process to propose. They took the view that the NPRM's disclosure requirements for arbitrators were insufficient, and for this reason they recommended that the Librarian publish a "select list" of 10 to 15 names before proceedings begin, with the requirement that those potential arbitrators file a

financial disclosure statement. Under this plan, parties to the proceeding would be allowed to review the statements and then file their objections, if any. Music Publishers, comment at 5.

(ii) *Changes in § 251.4.* The Office is adopting amendments to § 251.4 resulting from our decision not to provide any pre-proceeding period for discovery (discussed below in connection with §§ 251.45 and 251.63). Under the changes, the time period for filing objections to arbitrators has been reduced to 30 days. After consideration, however, we are unable to agree with the recommendations of either the RIAA/AARC or the Music Publishers. The RIAA/AARC proposal would require publication of a preliminary list that would be open to objections, followed by publication of a "clean" list of arbitrators whose names provoked no objections or who were found by the Librarian to be acceptable despite the objection. This would require substantial added administrative burdens, costs, and delays, and the "preliminary" lists would have to be long enough to insure a final list of at least 30 names.

We are not convinced that the procedure we are adopting will produce any chilling effect on participation by the parties. As we stated in the NPRM, 59 FR 2552 (1994), no peremptory challenges will be allowed, and all objections must be fully substantiated. Serious, well-grounded objections will certainly disqualify an arbitrator from selection to a CARP. Where the objections are not sufficient to prevent an arbitrator from being selected, the ethics rules of subpart D should be adequate to prevent biased decisions resulting from an objection.

Again, publication of "select" lists as proposed by the Music Publishers would be an additional and costly administrative burden, and would essentially eliminate the need for a master list. The conduct rules of subpart D of this interim regulation will require individuals appearing on the arbitrator list to file financial disclosure statements with the Librarian, and this requirement should satisfy the Music Publishers' primary concern.

(5) *Qualifications of Arbitrators.* Under § 251.5, as proposed in the NPRM, an individual must possess three basic qualifications to serve as a CARP arbitrator: Admission to the practice of law; 10 or more years of legal practice; and experience in conducting arbitration proceedings or facilitating the resolution and settlement of disputes. This proposal drew considerable comment from the parties, and there was substantial disagreement

among them as to whether the arbitrators should all be lawyers.

(i) *Comments on requirement for legal qualifications—(A) Certain copyright owners.* A group identified as "Certain Copyright Owners"⁹ favored adoption of the lawyer requirement because, they said, lawyers and judges have experience in operating under procedural and evidentiary rules and applying precedent. Certain Copyright Owners, comment at 3. They argued that there is "no need for panel members to possess any substantive expertise beyond knowledge and experience in the adjudication and resolution of disputes." *Id.* at 4. If non-lawyers were allowed to serve as arbitrators there might be some encouragement for the selection of experts such as economists; this, according to the comment, could "distort the process" by permitting the expert to "dominate the panel's consideration of any disputed questions within his or her area of expertise," and could create the potential for "unilateral decisionmaking." *Id.* at 4-5.

(B) *Program suppliers.* Program Suppliers believed that non-lawyers should be allowed to serve as arbitrators, although they proposed that each CARP include at least one lawyer. Program Suppliers, comment at 2. They welcomed the expertise a non-lawyer might bring to the arbitration process. In their view the participation of a non-lawyer could promote collegiality in the decision-making process, and they noted that the CRT Reform Act contains no provision forbidding consideration of non-lawyers. *Id.* at 6-7.

(ii) *Comments on selection of former judges.* The comments of Certain Copyright Owners, Program Suppliers, and Copyright Owners generally are agreed that the Librarian should give strong consideration to the selection of former judges as arbitrators. They proposed that § 251.5(c) be amended to read that a potential arbitrator must have "[e]xperience in conducting arbitration proceedings, or facilitating or presiding over the resolution and settlement of disputes." (emphasis added). Certain Copyright Owners, comment at 5; Program Suppliers, comment at 8; Copyright Owners, comment at 21. This amendment, they said, would make clear that individuals with judicial experience are qualified to serve on CARPs.

(iii) *Comments on continuity of membership.* There was considerable disagreement on the issue of continuity

⁹ This group was comprised of Sports Claimants, the NAB, PBS, NPR, Devotional Claimants, and Canadian Claimants.

of membership from one CARP to another.

(A) *Copyright owners.* Noting Chairman Hughes' floor statement on the desirability of continuity, the Copyright Owners argued that having the same arbitrators on multiple CARPs is "essential" to the efficient operation of the royalty rate adjustment and distribution process. Copyright Owners, comment at 20. In their view, continuity would "ensure consistency in the decisionmaking process," thereby fostering the likelihood of settlement among the parties to a proceeding. *Id.* To encourage continuity, the Copyright Owners proposed that § 251.5 be amended by adding a new subsection (d) to include an additional factor in the selection process, giving preference to any arbitrator who had previously served on a panel:

(d) In addition, arbitrators who have previously served on a CARP should be given a preference for selection to a subsequent CARP; provided, however, that no arbitrator shall be selected as a member of a CARP following the sixth anniversary of the date of his or her first selection as a member of a CARP.

Id. at 20-21.

(B) *Certain copyright users.* Commentators representing two groups of copyright users opposed the principle of continuity on the CARPs. NCTA argued that creating a preference based on service on an earlier CARP "could favor those, such as copyright owners, who regularly participate before the panels." NCTA, comment at 2. United Video echoed NCTA's concern, stating its belief that the creation of ad hoc arbitration panels was intended as Congress' remedy to the insular nature of the CRT:

As a practical matter, the licensees have no desire to see the CRT recreated in the guise of "stable" CARPs. Such "stability" would mean that copyright owners can yet again develop a body of mystical, impenetrable, unreasoned standards into which compulsory licensees are plunged every five years. . . .

United Video, comment at 2. Both NCTA and United Video argued that, at the very least, the Copyright Office should ensure that arbitrators who have served on CARPs in distribution proceedings are not also chosen to serve on CARPs in ratemaking proceedings. NCTA comment at 2; United Video, comment at 2.

(iv) *Amendment of § 251.5.* The Copyright Office has considered the varying viewpoints of the parties on qualifications of arbitrators, but we have decided to adopt § 251.5 as proposed with only one technical amendment to subsection (a). That subsection is

intended to require arbitrators to be admitted to the practice of law. Since membership in a bar association is not synonymous with admission to the practice of law, we are broadening the requirement accordingly.

(A) *Legal qualifications.* On the issue of whether arbitrators should be lawyers, we continue to believe that the adjudicatory nature of CARPs requires arbitrators to have experience in operating under procedural and evidentiary rules, applying precedent, and evaluating the legal significance of conflicting evidence. The importance of legal training is underscored by the relatively short period (180 days) allowed for conducting proceedings which are often long and complicated. Arbitrators will be called upon to decide substantive and procedural matters arising both during the hearings and in motions and pleadings, and there would be little or no time to train non-lawyers in how to handle them.

(B) *Former judges.* The Copyright Office believes that § 251.5 as drafted is certainly broad enough to allow appointment of former judges. Subsection (c), which is taken directly from section 802(b) of the Copyright Code, requires an arbitrator to have experience either in conducting arbitration proceedings or in facilitating the resolution and settlement of disputes. Unlike the Copyright Owners, we believe that experience in "facilitating the resolution and settlement of disputes" includes judges as well as mediators, and that the proposed "presiding over" language is unnecessary. The Office is therefore adopting subsection (c) as proposed.

(C) *The question of continuity.* Neither the Copyright Office nor the Library has had experience in selecting arbitrators under circumstances such as these, and for the present we think it is important to maintain flexibility in the selection process. The CRT Reform Act grants the Librarian considerable discretion in selecting arbitrators, and he intends to exercise that discretion to guard against any possibility of bias or undue influence. We therefore believe it would be a mistake to be bound to any system of preferences or exclusions in the selection process at this time. The Congress expressly chose not to make continuity among panel members a requirement. See 139 Cong. Rec. H10973 (daily ed. November 22, 1993) (floor statement of Rep. Hughes) ("The Librarian certainly has discretion to chose [sic] individuals willing to serve for 6 years. The Senate decided not to make this a requirement, however, and I agree with that decision."). At the same time, we understand that under

certain circumstances, especially in the case of distribution proceedings, continuity could have important advantages.

Without expressing it as a binding policy or writing it into the regulations as a requirement, we agree with Chairman Hughes that, in choosing arbitrators for future proceedings, the Librarian should look to the quality of service and soundness of decision-making an individual has displayed as a member of an earlier CARP. We also agree that, in the selection process for a rate-adjustment CARP, the familiarity a former arbitrator in a distribution proceeding has demonstrated with respect to particular parties and their arguments should be taken into account in weighing the possibility of bias. Experience with the CARPs will help to determine, later on, whether some system of preferences or exclusions should be written into these regulations.

(6) *Composition and selection of CARPs: Quorum requirements.* Section 251.6 of the NPRM described the procedure for selecting the members and chairperson of a CARP, and dealt with quorum requirements under various circumstances. Subsection (e) of the NPRM provided:

If for any reason one or more of the arbitrators selected by the Librarian is unable to serve during the course of the proceedings, the Librarian shall promptly appoint a replacement: Provided, that once hearings have commenced, no such appointment shall be made and the remaining arbitrators shall constitute a quorum necessary to the determination of the proceeding.

This provision would leave the possibility of a single arbitrator deciding an entire proceeding.

(i) *Comments of copyright owners.* To avoid the dangers inherent in a rule that would allow a quorum of one, the Copyright Owners proposed that subsection (e) be revised to read:

(e) If for any reason two of the arbitrators selected by the Librarian are unable to serve during the course of the proceedings, the Librarian will suspend the proceedings until at least one new arbitrator is selected. Two arbitrators shall constitute a quorum necessary to the determination of any proceeding.

Copyright Owners, comment at 22.

(ii) *Amendment of § 251.6.—(A) Quorum requirement.* The Copyright Office shares the Copyright Owners' concern, and is therefore adopting the requirement that two arbitrators constitute a quorum necessary to the determination of a proceeding. Should a CARP panel be reduced to one serving arbitrator for any reason, it would be necessary either to replace one or both of the other arbitrators or terminate the

proceeding. However, there are inherent problems in adopting a process of replacing arbitrators, especially after hearings have begun.

(B) *Problems presented by replacement of arbitrators.* Our concerns go to the heart of the fairness of the proceedings and compliance with the requirements of the Administrative Procedure Act. If a new arbitrator is selected midway through hearings in a proceeding, he or she will lose the benefit of earlier live testimony, and rights of parties to the proceeding under the APA could be compromised. We also recognize that proceedings cost a great deal of money, and that the parties may be reluctant or financially unable to repeat the hearing process in its entirety for the benefit of a new arbitrator. One partial solution to the fairness problem might be to require all CARP hearings to be recorded on videotape. As an alternative to terminating the proceedings completely and starting the whole process anew, videotaping might provide substantial monetary savings in the long run.

(C) *Compromise solution.* In an effort to ensure that a quorum of two will exist, and to provide rational, fair, and economical procedures for replacing arbitrators, including chairpersons, in various situations, the Copyright Office is adopting a compromise provision. Where one or two of the arbitrators has left a CARP panel, the Librarian of Congress may be called upon to suspend the proceedings (thus tolling the running of the statutory periods).¹⁰ If the hearing has not yet begun, the Librarian is obliged to bring a CARP back up to its full complement of three members; but, if the hearing is underway, no replacement will be made unless necessary to provide the required quorum of two members.

(a) *Hearings Not Yet Begun.* If hearings in the proceeding have not yet begun and the CARP has fallen below its statutory three-person complement (two arbitrators selected by the Librarian and a third chosen—as member and chairperson—by the other two), the Librarian will suspend the proceeding and inaugurate a procedure to bring the CARP back up to three members. Where one or two vacancies are to be filled, and either or both of the vacant seats were previously occupied by arbitrators chosen by the Librarian, the Librarian will select the necessary replacement or replacements. If there is one vacancy, and it was previously occupied by the

chairperson, the two remaining arbitrators will select the replacement. If there are two vacancies, and one was previously occupied by the chairperson, the Librarian will select one replacement, and that person will join with the remaining arbitrator to choose the replacement.

(b) *Hearings begun.* If hearings have begun, the Librarian will not suspend the proceedings and select replacements unless it is necessary to do so to achieve a quorum. In other words, if the hearing is underway with the full complement of arbitrators and one drops out, nothing need be done. However, if two of the three arbitrators drop out at once, or if the hearing is going forward with two arbitrators and one drops out, the Librarian will need to suspend the proceedings and select one new arbitrator (not two) to provide the necessary quorum.

Where the hearing has started and the CARP loses its chairperson, a problem arises since the Librarian has no authority under the statute to fill the chair of a CARP. The solution in this situation is to ask the two remaining arbitrators, or the one remaining arbitrator and the newly-selected arbitrator, to decide between themselves which of the two of them will serve as chairperson.

A more serious problem arises from the fact that a new arbitrator in an ongoing hearing will not have had the benefit of hearing and seeing the earlier testimony and arguments. In an effort to accommodate the rights of the parties under the APA and, at the same time to save time and money, the interim regulation requires that the Librarian's selection of a replacement arbitrator in an ongoing hearing receive the unanimous written agreement of all parties to the proceeding. If the parties agree, the hearings will continue from the point of suspension; if not, the Librarian will terminate the proceeding and start the whole process anew.

(7) *Suspension of proceedings.* Several provisions of these interim regulations, including those on the replacement of arbitrators under § 251.6 and the removal and replacement of an arbitrator for misconduct under Subpart D, require the Librarian to suspend any ongoing proceedings long enough to make the necessary replacement or replacements. Upon considering the problem the Copyright Office has concluded that these regulations should also contain a section governing the conditions and procedures for suspensions, making clear in particular that suspension tolls the running of the 180-day hearing period or any other time period in effect. We have added

this provision as § 251.8, at the end of subpart A.

Under subsection (a) of the new § 251.8, whenever an arbitrator must be replaced for any reason, the Librarian is obliged to order a suspension of the proceeding by notice to all parties in writing, to make the replacement expeditiously, and to give written notice to the parties of the resumption of the proceeding "from the time and point at which it was suspended." Subsection (b) is intended to deal with cases in which the Librarian is convinced that, because of temporary situations such as serious illness or personal tragedy affecting an arbitrator, it would be extremely difficult or impossible to continue the proceeding for the time being. In these situations, not involving replacement of an arbitrator, the proceeding may be suspended only with the written consent of all parties, and for a stated period of one month or less.

Section 251.8(c), which applies to all suspensions, provides that the suspension "shall result in a complete cessation of all aspects of the proceeding, including the running of any statutory period provided for completion of the proceeding." We believe it is necessary and important during the time of suspension to toll the periods provided for proceedings in the statute, particularly the 180-day period prescribed by 17 U.S.C. 802(e). The tolling provision is intended to allow sufficient time for selection of replacements without cutting into and reducing the full period the arbitrators will need for hearing the case and rendering a decision.

(c) *Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings*

Subpart C—Public Access to and Inspection of Records

The Copyright Office is adopting all of subparts B and C, as proposed in the NPRM, with changes regarding recordings and photographs at open meetings. The Copyright Owners requested a minor change in § 251.12, which governs the conduct of open meetings held by a CARP, to say that the right of a witness to withhold authorization of a recording of his or her testimony does not apply to the official transcript. We agree, but on further consideration we think § 251.12 could have been too strict in operation. We see no reason why the CARP proceedings should not be conducted with the greatest possible openness.

Section 251.12 now reads that the public and the news media will be able to take photographs and to make audio

¹⁰ The Copyright Office has added a new § 251.8 to Subpart A dealing with suspension of proceedings and tolling of the running of statutory periods, including the 180-day hearing period. This new section is discussed below.

or video records of the proceedings, so long as the CARP is informed in advance and nothing is done to disrupt the proceedings. The permission of the participants in the proceedings would not be required.

(d) *Subpart D—Standards of Conduct*

The CRT Reform Act amended section 802(b) of the Copyright Code to provide that the "Librarian of Congress, upon recommendation of the Register of Copyrights, shall adopt regulations regarding standards of conduct which shall govern arbitrators and the proceedings under this chapter." The need to provide standards of conduct for arbitrators in these regulations is particularly important because the CARP arbitrators are not employees of the Federal Government. They are private individuals to whom controversies are being referred under this particular form of alternative dispute resolution. Since the established standards of conduct for government employees are not applicable to the CARP arbitrators, these regulations must adopt those and other standards in the specific provisions of part 251.

Instead of proposing specific regulations in our NPRM, we asked for recommendations as to what standards of conduct should apply to the CARP arbitrators.

(1) *Comments and recommendations.* Three of the written comments addressed standards of conduct.

(i) *RIAA/AARC.* The RIAA/AARC strongly supported a code of conduct. On the ground that the characteristics of CARP arbitrators are closest to those of administrative law judges, they recommended that the Office base its regulations on the "Model Code of Judicial Conduct for Federal Administrative Law Judges," and attached to their comment pertinent provisions of the Code. RIAA, comments at 3-4, and Appendix.

(ii) *Music publishers.* The Music Publishers also suggested that the Office adopt rules based on the "Model Code of Judicial Conduct," and emphasized that the rule should prohibit all ex parte communications with the CARPs. Music Publishers, comments at 10.

(iii) *Copyright owners.* The Copyright Owners advocated strict standards, noting that royalty distributions can involve hundreds of millions of dollars. They specifically recommended that the Librarian investigate persons under consideration as arbitrators for conflicts of interest, and that, if any conflicts are found to exist before or during the proceeding, the particular individual be disqualified. With respect to employment of a potential or actual

arbitrator by any interested party, they recommended a pre-employment ban of five years and a post-employment ban of three years. In their view, however, current conflicts of interest or recent past employment with an interested party need not be disqualifying if the parties to the proceeding unanimously waive the disqualification. The Copyright Owners also recommended that strict regulations be adopted to prohibit ex parte communications, or any other appearances of impropriety, and to rule out unreasonable billing by the arbitrators. Copyright Owners, comments at 25-29.

(2) *Meeting with endispute representatives.* As the result of questions raised during an informal meeting of Copyright Office officials with two representatives from Endispute, an arbitration association, we have made some modifications to our sections on billing (§§ 251.3, 251.38, 251.54) and our definition of employment (§ 251.36). Those modifications are explained below in our discussion of each applicable section. A summary of our meeting with Endispute has been placed in the comment file of this docket and is available for public inspection.

(3) *Basic conclusions.* In formulating our interim rules for standards of conduct, the Copyright Office has considered the recommendations of the parties, and has incorporated some of them, as explained below. On the fundamental question of the model to follow, however, we have decided to base the rules on those promulgated by the Office of Government Ethics (OGE), rather than the codes of judicial conduct or codes governing administrative law judges. OGE's rules are more detailed and rely less on self-reporting or recusal. We believe it is important that the standards be clearly expressed so that the public is assured of fairness and the arbitrators know precisely what is expected of them. It is also important that, rather than merely expressing good intentions, the rules be enforceable and enforced.

(4) *Interim regulations on standards of conduct.* Part D of these interim regulations (§§ 251.30-39) reflects the Copyright Office's conclusions as to the general and specific standards to govern the conduct of CARP arbitrators. The following is a summary of these interim rules, and we solicit detailed comments on any or all of them.

(i) *Basic obligations of arbitrators.* Section 251.30 provides the basic obligations of the arbitrators in general terms. It is derived from Title 5, § 2635.101 of the rules of the Office of Government Ethics, as modified to meet

circumstances applicable to the CARP arbitrators.

The general obligations set out in § 251.30 apply both to the arbitrators selected to preside in a particular proceeding and to the arbitrators who are listed as available but who have not yet been selected. They specify that arbitrators: Shall not use their position for private gain; shall not hold any conflicts of interest; shall not solicit or accept gifts from interested parties; shall not reveal nonpublic information; shall not give preferential treatment to any party, shall not engage in outside activities that conflict with their duties; shall not seek employment with any interested party; and shall endeavor to avoid all appearances of impropriety.

In establishing these general obligations, the Copyright Office has also incorporated provisions from the Model Code for Administrative Law Judges recommended by the RIAA/AARC. These provisions address the behavior of arbitrators at hearing: To maintain order and decorum, to be patient, dignified, and courteous to the parties and witnesses, and to dispose of business promptly. RIAA, comment at Appendix.

These general obligations are to be considered just as binding as the specific obligations that follow in §§ 251.31-38. They are meant to cover situations not anticipated by the specific sections, but which nonetheless would constitute a violation of ethical standards. Complaints based on these general provisions are as valid, and must be taken as seriously, as those based on specific obligations. While most of the general obligations have more specific counterparts in the obligations spelled out in §§ 251.31-38, some do not. One example is § 251.30(f), which prohibits bias on the part of an arbitrator. A specific rule on bias would probably be futile because it could not envision all possible situations; but, if supported, a charge of bias could be grounds for disqualification.

(ii) *Financial interests.* Section 251.31 specifies what constitutes a financial conflict of interest that would result in an automatic disqualification to serve. This section does not cover all areas of potential bias; it applies only to those that involve a current financial conflict and would result in automatic disqualification. Other areas of potential bias would be covered by the objection procedure in § 251.4, as discussed above in connection with that section and below in connection with these Standards of Conduct regulations.

(A) *Distribution proceedings.* Section 251.31 states that, in a distribution proceeding, the arbitrator may not have

a financial interest in any claimant to that proceeding, or in any copyright owner that ultimately receives royalties from a claimant to the proceeding, whether or not the claimant is party to a voluntary settlement. The reason for disqualifying anyone with a financial interest in a party that has already settled its dispute is that, since distributions are annual proceedings, the arbitrator might otherwise be tempted to insert precedent that could help that party in the following year's controversy.

As noted, the prohibition against financial conflicts applies more widely than merely to interests in claimants to the proceeding. It also covers interests in copyright owners who receive royalties from a claimant to the proceeding, such as a television producer who does not file a claim herself but receives royalties from a syndicator who does.

(B) *Rate adjustment proceedings.* In a rate adjustment proceeding the arbitrator may not have a financial interest in any copyright owner or user entity that would be affected by the outcome of the proceeding.

(C) *Definition of financial interest.* For purposes of both distribution and rate adjustment proceedings, § 251.31(b) defines "direct or indirect financial interest" to include employment and other affiliations, ownerships of securities, and deriving any income, however small, from an interested party. Section 251.31(c) makes two specific exceptions to the definition of "financial interest": (1) Where the individual's money is invested in a mutual fund or blind trust and he or she cannot control the investment decisions; and (2) where the individual is receiving fixed post-employment benefits that would not be affected by the outcome of the proceeding, such as benefits from health insurance or a pension.

(D) *Curing a conflict of interest.* Section 251.32(b) provides two ways to cure a conflict of interest: (1) The potential arbitrator may divest himself or herself of the interest that caused the disqualification; or (2) the parties may be asked to consider the nature and degree of the conflict and, if all parties agree that the conflict is not sufficient to result in disqualification, the individual may serve.

(E) *Objection procedure.* Even if the arbitrator does not have a financial conflict of interest, parties who nonetheless believe a potential for bias exists for any other reason may petition the Librarian under the objection procedure described in § 251.4. Parties will have available to them the

employment history, affiliations, and the general nature of the clients represented by the potential arbitrators upon which to base their objections. The Librarian will rule on objections on a case-by-case basis.

(F) *Interests of relatives and associates.* Section 251.31(d) specifies that the financial interests of the arbitrator's spouse, minor child, and business associates are to be imputed to the arbitrator. This paragraph is derived directly from § 2635.402(b)(2) of the OGE's regulations.

(iii) *Financial disclosure statement.* Section 251.32 requires all listed arbitrators to file confidential financial disclosure statements with the Librarian, within one month following publication in the *Federal Register* of the annual list of arbitrators containing their names. To maintain the confidentiality of the statements, only the Librarian and designated Library staff will be permitted to review them. The Librarian will not select any arbitrator who has a conflict of interest as defined in § 251.31. When the two selected arbitrators pick their chairperson, they will have to consult first with the Librarian to see that the person they nominate has no conflict of interest. If the Librarian finds that a conflict does exist, the two selected arbitrators will be asked to choose another arbitrator who has no conflict of interest.

After the panel is selected, the arbitrators will have one week to file updated financial disclosure forms with the Librarian: This requirement is intended to ensure that no conflicts had developed between the time the arbitrators were listed and the time they were selected. If any conflicts arise during the later course of the proceeding, or if any change in an arbitrator's financial interests presenting a disqualifying conflict of interest is found during the hearing to have gone unreported, the Librarian will suspend the proceeding in accordance with § 251.8 of these interim regulations and replace the arbitrator with another arbitrator from the arbitrator list.

(iv) *Ex Parte communications.* Section 251.33 sets out the varying circumstances under which a ban is imposed on ex parte communications with: (1) The Librarian of Congress or the Register of Copyrights; (2) staff of the Library or the Copyright Office; (3) persons selected as arbitrators in a proceeding; and (4) persons named in the current list of qualified arbitrators. The section also describes what anyone receiving a prohibited communication must do, and the possible consequences of a violation of the rule.

(A) *Prohibited communications—(aa) Communications with librarian or register.* (1) Who is banned from communicating: Anyone outside the Library of Congress or Copyright Office;

(2) What communications are banned: The merits or status of any matter, procedural or substantive, relating to royalty distribution or rate adjustment;

(3) When communications are banned: Any time.

(4) Exceptions: Statements on public policies involved in CARP operations where the discussion is unrelated to specific proceedings; for example, a discussion on the advisability of amending the copyright statute.

(bb) *Communications with Library of Congress or Copyright Office staff.* (1) Who is banned from communicating: anyone outside the Library or the Office;

(2) What communications are banned: The substantive merits of any past, pending, or future royalty distribution or rate adjustment proceeding;

(3) When communications are banned: Any time.

(4) Exceptions: procedural inquiries. If the employee does not know the answer, he or she will relay the question to the CARP and pass the answer back to the inquirer.

(cc) *Arbitrators selected by the librarian.* (1) Who is banned from communicating: Interested parties or anyone acting at their instance;

(2) What communications are banned: Total ban on all communications for any reason.

(3) When communications are banned: A period beginning with the arbitrator's selection and ending with the filing of the CARP's report, and, if the matter is remanded, the period starting with the reconvening of the CARP, and ending with the filing of the final report.

(4) Exceptions: None

(dd) *Arbitrators listed as qualified in current list.* (1) Who is banned from communicating: Interested parties or anyone acting at their instance;

(2) What communications are banned: The merits of any past, pending, or future royalty distribution or rate adjustment proceeding;

(3) When communications are banned: The period when the individual's name appears on the Librarian's current list of qualified arbitrators;

(4) Exceptions: None.

(B) *Action required by recipients of banned communication.* Anyone who receives a prohibited communication is required immediately to end the communication and place on the public record of the proceeding the actual communication, if written or recorded,

or a description of the communication, if oral, together with a memorandum describing any further responses. The communication may not be considered by the CARP unless and until it is properly submitted into evidence by one of the parties.

(iii) *Action taken by librarian or CARP.* Either the Librarian or the CARP may require the party responsible for the prohibited communication to show cause why that party's interest in the proceeding should not be dismissed or otherwise adversely affected. This provision is derived from section 557 of the Administrative Procedure Act.

(v) *Gifts and other things of monetary value.* Section 351.34 deals with the ethical question of when, if ever, an arbitrator may accept gifts or other things of monetary value "from a person or organization having an interest that would be affected by the outcome of the proceeding," whether or not there was any intent to influence the outcome. The ban would be total for arbitrators actually selected for a CARP, and somewhat less stringent for individuals named as qualified on the Librarian's current list. The prohibition covers both direct and indirect solicitation and acceptance of gifts or things of value; it extends to gifts or other monetary benefits to the individual's family, or to a charity, if provided with the knowledge of or at the instance of the selected or listed arbitrator.

(A) *Selected arbitrators.* For arbitrators who have been selected to serve on a CARP, § 251.34 establishes a total ban on the solicitation or acceptance of any gifts or other monetary benefits, no matter how small in value. The prohibition would be in effect from the time of the arbitrator's selection through the submission of the CARP report, and during any court-ordered remand.

(B) *Listed arbitrators.* The ban also applies to arbitrators named on the Librarian's current list, but with two exceptions: (1) Acceptance of gifts or other things, including meals, where their value is less than \$20 per occasion and less than \$50 in a calendar year; and (2) acceptance of gifts or other things when the circumstances make it clear that the action was motivated purely by family and personal relationships. These two exceptions are derived from the OGE's regulations, and are intended to make plain that nominal, unsolicited benefits cannot be used to disqualify a potential arbitrator. They are not intended to encourage gift-giving under any circumstances, especially where, as here, arms-length relationships should be the rule rather than the exception.

(vi) *Outside employment and other activities.* Section 251.35 specifies that, once an arbitrator has been selected for a CARP and until all possibility of a court-ordered remand is ended, the arbitrator is required to refrain from any outside activity that would raise a question about the individual's ability to render an impartial decision. This ban extends beyond matters that could be considered a financial conflict of interest, and beyond receipt of gifts or other things of value. The following are examples of prohibited activities: giving free legal advice; attending a gathering sponsored by an interested party; giving a speech related to the proceedings; or accepting direct or indirect payment of honoraria. The ban on honoraria covers appearances, speeches, and articles that are related to the proceeding or, if the offer is from an interested party, that are related to any matter.

(vii) *Pre-arbitration and post-arbitration employment restrictions.* Section 251.36 provides that no arbitrator will be selected for a CARP if he or she had been employed within the previous five years by a party financially interested in the proceeding, although this rule may be waived under certain circumstances with the unanimous consent of the parties. The section also prohibits arbitrators from arranging future employment with any party to the proceeding, and from entering into employment with any party for three years after the date of the CARP report. "Employment" for these purposes is given its most expansive meaning to include any business relationship that involves the providing of personal services, but not including service as an arbitrator, mediator, or neutral. The five-year rule for pre-arbitration employment, and the three-year rule for post-arbitration employment, is based on the comments of the Copyright Owners. Copyright Owners, comment at 26-27. The definition of "employment" comes from § 2635.603(a) of the OGE's regulations. The exception for employment as an arbitrator, mediator, or neutral was adopted following our discussion with Endispute.

(viii) *Use of nonpublic information.* As noted earlier, it is our intention that CARP proceedings be conducted as openly as possible. In proceedings such as these, however, there will necessarily be information that must be kept confidential, and § 251.37 deals with these situations. Arbitrators are not to reveal any information from filings, pleadings, or evidence that the CARP has ruled to be confidential. Nor, unless required by law, are arbitrators to disclose any of the following: Intra-

panel communications, or communications between the Library and the panel, intended to be confidential; draft rulings or decisions; and the final CARP report before it is submitted to the Librarian. Section 251.37(c) also prohibits an arbitrator from using nonpublic information for personal profit or for the profit of anyone else. This provision was derived from § 2635.703 of the OGE's regulations.

(ix) *Billing and commitment to standards.* In response to requests from the parties that these regulations seek to ensure that arbitrators' charges are reasonable, we have adopted the following provisions on billing:

(A) *Bound by initial proposal.* Arbitrators will be bound by the hourly or daily charge they proposed when their names were first submitted for listing by the Librarian. See § 251.3. They will not be allowed to charge in excess of those rates. We think this requirement will induce arbitrators to quote reasonable rates, since they know that their selection by the Librarian will be based in part on this factor.

In our discussions with Endispute a suggestion was made to allow arbitrators to charge a reasonable cancellation fee if a proceeding is settled early, to compensate them for having cleared their schedules. We have not adopted the proposal in these interim regulations, but we solicit comments on whether a cancellation fee is justifiable and, if so, how it might be worked into the overall CARP scheme for paying arbitrators.

(B) *Incidental expenses.* Arbitrators residing within the Washington, DC metropolitan area¹¹ will not be allowed to bill for incidental expenses such as local travel, meals, telephone calls, postage, and the like. All their incidental expenses will have to be absorbed entirely in the hourly or daily rate the arbitrator proposes. Arbitrators can, and doubtless will, take their incidental expenses into account when proposing their rate. In addition, as required by section 801(d) of the Copyright Code, the Library and the Copyright Office will provide the CARPs with necessary administrative services, and this will sharply reduce some of the arbitrators' incidental expenses. Arbitrators who reside outside the Washington, DC metropolitan area will be allowed to add their expenses for travel, lodging, and

¹¹ The Washington, DC metropolitan area is comprised of the District of Columbia, the independent cities of Alexandria, Fairfax, and Falls Church, the Virginia counties of Arlington, Fairfax, and Loudoun, and the Maryland counties of Montgomery and Prince Georges.

meals to their bills so long as these expenses do not exceed the applicable government rate.¹²

(C) *Detailed accounting.* Arbitrators are required to submit a detailed account of the work they performed during their billed time. This should give the parties a means of reviewing the reasonableness of the charges.

(D) *No billing for support services.* Except for support services provided by the Library of Congress and the Copyright Office, the arbitrators will be required and expected to perform their own work, including research, analysis of the record, and decision-writing. Although it might be argued that delegating some more routine work to others could lower the bill, this practice would undermine the full use of the arbitrators' experience and expertise, which were the reasons for their selection.

(E) *Signed agreement.* Finally, the Library will require all arbitrators to sign an agreement at the time of their selection, stating that they will abide by all of the standards of conduct and billing restrictions specified in this subpart. Failure to sign the agreement will preclude selection of the individual for a CARP.

(x) *Sanctions and remedies.* Section 251.39 specifies some of the sanctions and remedies for the violation of the standards of conduct provided by this subpart. The listings, which are not exhaustive, are divided into subsections laying out the sanctions and remedies applicable to: (1) Selected arbitrators; (2) listed arbitrators; and (3) interested parties who engaged in ethical violations. A final subsection, applicable to any and all violations of the standards of conduct under these regulations, authorizes the Librarian of Congress to refer the matter to the Department of Justice or other law enforcement authority for criminal prosecution. The following is a summary of § 251.39:

(A) *Selected arbitrators.* Sanctions and remedies applicable only against arbitrators selected to serve on a CARP: Removal from the proceeding;

(B) *Selected and listed arbitrators.* Sanctions and remedies applicable against both arbitrators selected to serve on a CARP and persons listed as qualified in the Librarian's current list:

(aa) Permanent removal of the person's name from the current and any future list of available arbitrators published by the Librarian;

(bb) Referral of the matter to the organized bar of which the person is a member for possible disciplinary action; and

(cc) Referral of the matter to competent law enforcement authority for possible criminal prosecution.

(C) *Interested parties or individuals.* Sanctions and remedies applicable against interested parties or individuals who violate the ethical standards established by this regulation:

(aa) Referral of the matter to the organized bar or professional association of which the offending individual is a member for possible disciplinary action;

(bb) Barring the offending individual from current appearances before the CARP, from future appearances, or both;

(cc) Designation of an issue in the current or in a future proceeding, requiring the party to show cause why its interest should not be dismissed, denied, or otherwise adversely affected; and

(dd) Referral of the matter to competent law enforcement authority for possible criminal prosecution.

On the question of referral of cases for criminal prosecution we note that, although arbitrators are not Federal Government employees, we are firmly of the opinion that U.S. criminal provisions do apply to attempts to influence them. Title 18 U.S.C. 201, which prohibits the influencing of public officials, defines public officials as

* * * an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror. [emphasis supplied]

We believe that arbitrators are persons acting for or on behalf of the Library of Congress by the authority of the Librarian. Therefore, although we certainly hope the situation never arises, we will not hesitate to refer for criminal prosecution attempts to influence the arbitrators.

Questions may well be asked as to how the Library of Congress would go about removing a selected arbitrator from a proceeding under this subpart, and the legal basis for such an action. We believe that the appropriate procedure for the Librarian would involve suspension of the proceeding under § 251.8, issuance of an order declaring the arbitrator's seat vacant and the reasons for that action, and appointment of a replacement under § 251.6. The legal basis for the action would be the arbitrator's violation of

these regulations, and the breach of his or her contract with the Librarian of Congress under which the individual was committed to observe these regulations. We invite comments on these conclusions, and on other possible sanctions and remedies for violations of these rules.

(xi) *Appendix to this preamble: Examples of typical fact situations.* In setting these standards of conduct, the Office is aware that the interests that could be affected by rate adjustment and royalty distribution proceedings are quite extensive. We therefore wish to make sure, especially in the area of financial conflicts of interest, that we have set the standard at an appropriate point. Should we cast the net wider in our efforts to anticipate bias, or, on the contrary, have we gone too far? As an appendix to this preamble, we have set out ten examples (with their related section numbers) of situations that seem likely to occur in the next few years. We solicit comments as to whether or not these situations should be grounds for eliminating an arbitrator from consideration by the Librarian to serve on a panel. Please note that these examples are intended solely to focus thought and elicit opinions; they are in no way intended to suggest our opinions on how they should be answered.

(e) *Subpart E—Procedures of Copyright Arbitration Royalty Panels*

(1) *Formal hearings—(i) Phase I and Phase II proceedings.* In cable royalty distribution proceedings, the former Tribunal traditionally divided the proceeding into two phases. In Phase I, the Tribunal determined the percentage allocation of the royalty pool among nine categories of claimants.¹³ Then, if there were any disputes within a claimant category, the Tribunal would move to Phase II and make a suballocation. However, this procedure was "common law" at the Tribunal and was not embodied in § 251.41, which states only that formal hearings will be conducted for royalty distribution. It was not adopted, even as "common law," for satellite royalty distribution proceedings because the first three yearly funds were completely settled.

We solicit comments on the following:

Is the procedure of dividing a cable distribution proceeding into Phases I

¹³ The nine Phase I categories were: Program Suppliers, Sports, Commercial Television, Music, Noncommercial Educational Television, Devotional Claimants, Canadian Claimants, Noncommercial Educational Radio, and Commercial Radio. The claimant categories resulted mostly from the way the claimants themselves coalesced before the Tribunal, as they were entitled to do under section 111.

¹² As of January 1, 1994, the government rate for the Washington, DC metropolitan area is lodging not to exceed \$113 a day, and \$36 for meals (\$8 breakfast, \$8 lunch, \$20 dinner).

and II a precedent that is binding on the Copyright Office?

If not, should it nonetheless be followed?

If it should be followed, should we adopt rules governing the procedure?

Should those rules include a definition of each of the Phase I categories?

(ii) "Paper" proceedings. As proposed, § 251.41(b) of the NPRM permitted the parties to petition the Librarian to have their controversy decided solely on the submission of written pleadings. However, the section did not identify the basis on which the Librarian would rule in favor of the petition. The Music Publishers urged that the basis should be the same as that for summary judgment set forth in Rule 56 of the Federal Rules of Civil Procedure: "that there is no genuine issue as to any material fact." Music Publishers, comment at 9-10.

The Copyright Owners proposed a procedure called "summary decision," which would use the same standard: "no genuine issue for a hearing." They also proposed including a procedure for "motions to dismiss" for disposing of claims or petitions, which would be handled within the same framework. Motions for "summary decision" and "motion to dismiss" could be filed with the CARP panel or, if no panel had been constituted, with the Librarian. Copyright Owners, comment at 24.

The Office agrees with Music Publishers and Copyright Owners: the grounds for granting a petition for a "paper hearing" should be that no genuine issue exists as to any material fact. We have added a second ground supporting petitions for "paper hearings": if all parties to the proceeding agree to the petition.

As under the NPRM, petitions asking that a controversy be decided on the basis of written pleadings may be filed with the Librarian during the 30-day pre-hearing periods provided in §§ 251.45 and 251.63. If the Librarian finds that there is no factual issue requiring a formal hearing, or that all parties agree that the petition should be granted, he or she may decide in favor of "paper proceedings." Unlike the NPRM, however, § 252.41 now gives the Librarian alternative discretion to designate the request for a paper proceeding as an issue for the CARP. Similarly, the procedure for a motion to dismiss, to be found in § 251.45(b), is to file it with the Librarian who may, in his or her discretion, decide the motion to dismiss or designate it an issue for the panel.

(2) *Suspension or waiver of rules.* Section 251.42 provides that a CARP,

for purposes of that panel's individual proceeding only, may waive the procedural provisions of the rules upon a showing of good cause. Copyright Owners have asked that any waiver of the procedural rules by the panel be allowed only if all the parties to the proceeding agree. Copyright Owners, comment at 23.

The Copyright Owners may be concerned that the discretion of the panel to waive rules could lead to a denial of due process, but the proposal to allow waivers only with the unanimous consent of the parties may go too far in the opposite direction. It might hinder a CARP's efforts to do justice in an individual instance, and it might give the party opposing the waiver unfair leverage. For example, the panel might want to waive the rules that allow only direct and rebuttal testimony, thus permitting surrebuttal testimony in the interest of getting more information. If unanimous consent were needed for the waiver, however, the party that might be disadvantaged by the additional information would have a veto.

The Office has decided to retain this provision as written, but we will closely monitor the circumstances under which future CARPs find good cause to suspend or waive the rules. Should any patterns of unfairness or denial of due process begin to emerge, we will revisit this provision.

(3) *Filing and service of written cases and pleadings—(i) Attestation of Written Testimony.* Section 251.44(d) requires that the written testimony of each witness be accompanied by an affidavit or declaration. Copyright Owners asked that this requirement be deleted and be made optional because witnesses testify orally under oath, and, in essence, swear twice. Copyright Owners, comment at 23. However, because some testimony is stipulated and is entered into the record without oral testimony, we have decided to retain the provision.

(ii) *Typographical error.* With regard to subsection (e)(1) of § 251.44, the Copyright Owners noted a typographical error: The word "not" was inadvertently left out when the subparagraph was carried over from the former Tribunal's rules. Copyright Owners, comment at 23. The correction has been made.

(iii) *Service list.* Subsection (f) requires the parties to a proceeding to serve everyone on the service list when making a filing with the CARP or the Librarian. The Copyright Owners asked that the section be amended to require the Librarian to develop a service list for each proceeding and distribute it to the parties so that they can comply with the

requirements of service. The Copyright Owners also asked for the rule to specify that each party to a proceeding has an obligation to inform the Librarian of changes in its name or address affecting the service list. Copyright Owners, comment at 23. These are both good suggestions with which we agree, and we have amended the subsection accordingly.

(iv) *Oppositions and replies.* Copyright Owners requested that one or more new paragraphs be added to § 251.44 to provide for automatic pleading cycles whenever motions are filed in a proceeding. They recommended that oppositions to motions be filed within ten days and replies to oppositions be filed within five days of the date of service. Copyright Owners, comment at 23-24. The former Tribunal's rules did not contain provisions on these points, which we agree will be useful. Accordingly we have added a new subsection (g) to § 251.44.

(4) *Precontroversy motions and discovery.* Section 251.45, as proposed in the NPRM, provided a period for precontroversy exchange of documents and discovery, and the filing of precontroversy motions and objections. The resolution of these precontroversy actions would have been made by the Librarian.

(i) *Comments of copyright owners.* The Copyright Owners supported, in principle, the concept of a period of discovery to take place before the 180-day arbitration period, as a means of reducing hearing costs and focusing the issues to be decided. However, they argued that precontroversy discovery would be a "wasted effort" if it were to occur before the filing of the written direct cases, and that discovery requests should be focused on actual written cases rather than general information. They also urged that resolution of precontroversy matters should be made by the CARP, not by the Librarian, because the panel would ultimately be the body to determine the relevance of the proffered facts. Copyright Owners, comment at 6-9. To achieve what the Copyright Owners want—precontroversy discovery handled by the CARP and based on written direct cases—it would be necessary to have the written direct cases filed, and the CARP empaneled, before the beginning of the 180-day arbitration period.

To accomplish this goal in accordance with the provisions of the Copyright Code, the Copyright Owners recommended that a distinction be made between "the commencement of proceedings," 17 U.S.C. 803(d), and the "notice initiating an arbitration

proceeding," 17 U.S.C. 802 (b) and (e). Under this theory the Office would first declare the "commencement of proceedings" and thereupon require the filing of written direct cases and empanel the CARP; discovery motions and objections would be ruled on by the CARP. After discovery is complete the Office would then "initiate an arbitration proceeding," and at that point the 180-day arbitration period would begin to run. Copyright Owners, comment at 9-12.

(ii) *Amendment of § 251.45.* We agree with the Copyright Owners that precontroversy discovery before the filing of written direct cases would not be productive. At worst it could raise the costs of litigation and become a fishing expedition to harass an opposing claimant. However, as a matter of statutory construction, the Office cannot agree that the "commencement of proceedings" can be conceptually separated from "initiating an arbitration proceeding" so as to permit the CARP to sit earlier than the 180-day arbitration period. Section 802(b), which first uses the phrase "initiating an arbitration proceeding," employs it in the context of "a notice in the Federal Register initiating an arbitration proceeding under section 803 * * *". In § 803, the notice to which § 802(b) refers is the "notice of commencement of proceedings." Therefore, the phrases refer to each other and must be considered synonymous. Although, as noted in the NPRM, Chairman Hughes in his statement accompanying the CRT Reform Act recommended that our regulations provide for precontroversy discovery "to the extent practicable," we have come to the conclusion that there is no way to accomplish this goal under the statutory scheme.

We have therefore amended § 251.45 to eliminate the proposal for precontroversy discovery, and we have not adopted the Copyright Owners' recommendation to have discovery of written direct cases ruled on by the Panel before the 180-day period, because we do not believe that the statute allows for it.

(5) *Transcript and record.* We have reviewed § 251.49 on our own motion. The former Tribunal's rules required persons wishing a copy of the hearing transcript to purchase it from the official reporter, but we think the public should not only be able to inspect the transcript but also to make their own copies. We have therefore amended the section to provide that, during the proceeding, the public will have the opportunity to copy the transcript at a location specified by the CARP chairperson. After the proceeding, the transcript and the rest of

the written record will be available at the Copyright Office for copying.

In addition, partly for reasons discussed above in connection with § 251.6, we solicit comments on whether the hearing sessions should be recorded on video as well as audio tape. Videotaping would add to the costs of the proceeding, but it would have several advantages: (1) Ensuring the accuracy of the official transcript, (2) allowing the arbitrators to reach a better decision by helping them to review the case more accurately, and (3) affording arbitrators who missed any portion of the proceeding, because of illness or because they were appointed after the proceeding had begun, an opportunity to make up for their absences.

(6) *Assessment of costs of arbitration panels.* Section 251.54 provides for the assessment of the costs of the Arbitration Panels.

(i) *Comments on assessments in distribution proceedings.* The Copyright Owners and RIAA/AARC have asked that the section be amended to provide that, in distribution proceedings, the costs of the CARPs be deducted from the relevant royalty fund. Copyright Owners, comment at 24. RIAA/AARC, comment at 4. The Office finds that it does not currently have authority to adopt this proposal. Section 802(h)(1) of the Copyright Code states: "The Librarian of Congress and the Register of Copyrights may * * * deduct from royalty fees * * * the reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter." It does not provide that the Office can deduct the costs incurred by the CARP.

We agree that this is an unsatisfactory result. The Librarian of Congress, with input from the Copyright Office, is in the process of drafting "financial reform" legislation that would deal with this problem among other fiscal matters affecting the Library; we hope that the legislation will be introduced and enacted in the 103rd Congress. As currently drafted, title V of the proposed bill would add the following provision dealing with the point at issue here:

In distribution proceedings, the Librarian of Congress and the Register of Copyrights may deduct from royalty fees deposited or collected under this title the reasonable costs incurred by the copyright royalty panels, and pay the arbitrators from such deductions at such intervals and in such manner as the Librarian of Congress shall by regulation provide. Such deduction shall be made before the fees are distributed to any copyright claimants. Claimants shall bear the costs of the copyright arbitration royalty panels in direct proportion to their share in the distribution.

We invite further comments on this problem. Should the proposed legislation be enacted we would, of course, go forward with additional regulatory proceedings aimed at implementing it.

(ii) *Comments and assessments in ratemaking proceedings.* NCTAs expressed concern about the assessment of costs in a ratemaking proceeding. Section 251.54(a)(1) repeats the statutory language from § 802(c): "In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the panel shall direct." NCTA believes that it would be unfair for it to be assessed part of the costs of a rate adjustment proceeding it did not initiate; speculating that it could find itself defending an existing rate only because some other party petitioned to have it reconsidered. NCTA asked that the arbitrators be instructed to proceed on the presumption that the party seeking the rate adjustment should bear the costs of the proceeding. NCTA, comment at 3.

When the Tribunal was in existence, the costs of a rate adjustment proceeding were borne by the taxpayers, because the only authority the Tribunal had to assess its costs to the parties was for distribution proceedings. See, former 17 U.S.C. 807. Therefore, neither the petitioners nor the nonpetitioners paid any of the costs of a rate adjustment proceeding. With the adoption of the CRT Reform Act, Congress made a policy decision that taxpayers no longer would pay for the rate adjustment proceedings, and that the costs would be entirely borne by the parties. However, we cannot find any suggestion, nor is there any reason to believe, that Congress wanted to put the costs of the proceeding on the petitioner alone. On the contrary, Congress expressly stated that all the parties to a ratemaking proceeding shall pay, and left it to the panel to decide only the manner and proportion of their payments. The effect of putting the costs on the petitioner would be to make petitioners pay a high price for the periodic rate reviews that are already scheduled and contemplated by Congress.

NCTA's concern about a frivolous petitioner for rate adjustment may be justified. However, § 803 of the Copyright Code provides that only petitioners with a significant interest in the rate can initiate a rate adjustment proceeding. Therefore, frivolous petitions or petitions from noninterested persons will be dismissed. However, once a petitioner with a significant interest petitions, the rate review

becomes a matter of the public interest, because any member of the public may potentially pay, be a recipient of, or be affected by the rate. Therefore, since the burden should be shared by both the owners and users in an inquiry as to which rate would best serve the public interest, we cannot agree with NCTA's request.

(iii) *Comments on billing cycle.*

Endispute expressed concern with the NPRM's proposal to have the arbitrators bill the parties only after the submission of the panel's report to the Librarian. In a 180-day proceeding, the arbitrators might have to wait seven to eight months before receiving any compensation. Endispute urged that the arbitrators be able to bill the parties monthly, but this would raise difficulties in a distribution proceeding. There, the parties, by law, are to pay the arbitrators in proportion to their share of the fund, but their share will not be known until the end of the proceeding.

Because of this problem we have not included a provision for monthly billing in this interim regulation. At the same time we are soliciting comments on the advisability of monthly billing and how it might be accomplished, given the statutory requirement that parties pay in proportion to their share of the fund. We are also interested in comments on the feasibility of alternatives to monthly billing, such as requiring the parties to make advance partial payments until a final bill can be prepared.

(4) *Amendment of § 251.54.* After reviewing the question of assessments, we have decided to modify the rule to take account of the possibility that, after the CARP has made its report, the Librarian may change the final distribution percentages or the percentages may be changed because of a court-ordered remand. As amended, the section requires the parties who have paid the arbitrators according to earlier percentages to reimburse each other to reflect the final percentages.

(f) *Subpart F—Rate Adjustment Proceedings*

(1) *Scope and commencement of adjustment proceedings.* In its comments EIA challenged the Office's characterization in §§ 251.60 and 251.61 of the authority to raise the DART royalty maximum as a "rate" adjustment proceeding. They argued that the charge—2% of the transfer price—cannot be changed by the Librarian, and that only the maximum of \$8/\$12 per device can. EIA, comment at 3-4. Whether the word "rate" encompasses only the applicable percentage, or whether it also includes the floors and ceilings on that percentage, does not

have to be addressed here because, as noted above, the review of the DART royalty maximum by the Librarian is not a CARP proceeding. Therefore, the Office has deleted the references to it in §§ 251.60 and 251.61.

(2) *Period for consideration.* Section 251.63 provides a 30-day period before a rate adjustment proceeding to give the parties an opportunity to settle their differences.

(i) *Comments of copyright owners.* The Copyright Owners have asked that the first sentence be amended to clarify that the period is for consideration "of settlement." Copyright Owners, comment at 25. The Office concurs, but has further modified the phrase to read "consideration of their settlement." This is because it cannot be known officially who all the parties to a rate adjustment proceeding will be until the proceeding is initiated and everyone has had an opportunity to file notices of intent to participate. Therefore, pre-proceeding settlements can be reached only by those parties who make themselves known to each other, and the most that can be achieved is a settlement of their differences.

(ii) *Comments of music publishers.* The Music Publishers asked how a rate settlement reached during the period before convening of the CARP could be approved by the Librarian. Music Publishers, comment at 7-8. If there is a settlement among the known parties, no approval by the Librarian is necessary. Either it will result in a withdrawal of the rate petition, or it will become the jointly-held position of the parties to the settlement as to what the new rate should be. Once their jointly-held position becomes known, it cannot be considered a full settlement until the rate is proposed to the United States public, either in a notice-and-comment proceeding or in a CARP proceeding.¹⁴

(iii) *Request for comments.* The Office has made no changes in the interim rule. However, we are interested in comments concerning the 30-day settlement period in rate adjustment proceedings. We have two specific questions:

If a settlement is reached, would it be a useful alternative to the convening of

¹⁴The settlement that was reached in the 1987 mechanical license rate adjustment among Music Publishers, RIAA and the Songwriters Guild of America (SGA) was not approved as a final disposition of the rate adjustment by the Tribunal. It was proposed to the public in a notice-and-comment proceeding to see if the jointly-held position of these three organizations should become the basis of the Tribunal's rate adjustment. The comments agreed with Music Publishers/RIAA/SGA's proposal, and only then did the Tribunal adopt it. 1987 *Adjustment of the Mechanical Royalty Rate*, 52 FR 22637 (1987).

a CARP for the Library/Office to propose the agreed-upon rate to the public in a notice-and-comment proceeding?

Does the Librarian have authority to adopt such a procedure, or would the convening of a CARP be required?

(3) *Assessment of costs.* Section 251.65 is based on § 802(h)(1) of the statute as amended by the CRT Reform Act, which allows the Librarian of Congress and the Copyright Office to assess their reasonable costs to the parties "to the most recent relevant arbitration proceeding." EIA commented that this assessment is only permitted, according to § 802(h)(1), "if no royalty pool exists from which their costs can be deducted." EIA, comment at 4. EIA's point is well-taken, and the Office has modified the section accordingly.

EIA requested further that the costs of the proceeding to raise the DART royalty maximum by the Librarian be assessed to the DART royalty pool. EIA, comment at 5. However, as noted above, this proceeding is not a CARP proceeding and is therefore not germane to this rulemaking.

(g) *Subpart G—Royalty Fee Distribution Proceedings*

The Copyright Office is adopting subpart G as proposed in the NPRM with one technical amendment. The reference to "cable television" in § 251.72(a) and § 251.73 is being changed to read "cable," as noted in the preamble discussion to § 251.2.

(h) *Part 252—Filing of Claims to Cable Royalty Fees*

Part 252 prescribes the filing requirements for claims to cable royalties. As noted in the NPRM, the procedural system for filing cable claims borrows heavily from the one adopted by the former Tribunal for the filing of digital audio claims. See 58 FR 53822 (1993).

(1) *Content of claims.* Section 252.3 prescribes the general requirements for the submission and content of cable royalty claims.

(i) *Joint claimants.* The CRT's requirements for filing DART claims included provisions dealing with joint claims. In setting out the required content of claims, subsection (a)(3) provides:

If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim. For this purpose a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard agreements.

Subsection (e), as adopted from the CRT's regulations and proposed in the NPRM, provided:

All claimants filing a joint claim shall make available to the Copyright Office, other claimants, and, where applicable, a Copyright Arbitration Royalty Panel, a list of all individual claimants covered by the joint claim.

(A) *Comments of PBS.* According to PBS, when it comes to joint claims it is unclear, under subsections (a)(3) and (e) of § 252.3, how to satisfy the requirement in subsection (a)(4) for identifying a secondary transmission that "establish(es) the basis for the claim." Would the requirement be satisfied by identifying at least one secondary transmission for at least one of the claimants included within a joint claim? Or is it necessary to identify at least one such transmission for each individual claimant included within the joint claim? PBS, comment at 2.

PBS argues that the former interpretation is the correct one, since the requirement in subsection (e) for filing a list identifying all joint claimants would not be necessary if each joint claimant had to identify a secondary transmission. Further support for this interpretation is drawn from the fact that § 252.3 is adopted from the filing requirements for DART, which clearly do not require each joint claimant to identify one or more of his or her songs that were the subject of a digital transmission. PBS, comment at 2-3.

PBS asks us to clarify this matter and amend § 251.3 so as not to require identification of a secondary transmission for each joint claimant. They note that they currently spend upwards of 300 hours a year on this requirement,¹⁵ which they argue serves no substantive purpose beyond providing a jurisdictional basis for a party to participate.

(B) *Amendment of § 252.3(e).* We acknowledge that § 252.3 as proposed in the NPRM muddies the waters for the filing of cable royalty claims, and of satellite royalty claims as well. We are troubled, however, by changing what had been a longstanding requirement at the Tribunal for obliging all claimants to identify at least one secondary transmission of their copyrighted works. While such requirement does undoubtedly add to the time and expense burdens of joint claimants such as PBS, it is not without purpose. The law states plainly that cable compulsory

license royalties are only to be distributed to "copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period." 17 U.S.C. 111(d)(3). To support such a claim, each claimant may reasonably be asked to identify at least one secondary transmission of his or her work, thus permitting the Copyright Office to screen the claims and dismiss any claimants who are clearly not eligible for royalty fees. The requirement will also help to reduce time spent by a CARP determining which claimants have a valid claim: If only one secondary transmission is identified for one of the joint claimants, then it could not readily be determined if the other claimants were even eligible for cable royalties.

In an effort to end this confusion we are deleting subsection (e) with its requirement that joint claimants submit a list identifying all the claimants. Instead, we are amending subsection (a)(4) to require that each claimant to a joint claim, other than a joint claim filed by a performing rights society on behalf of its members or affiliates, must identify at least one secondary transmission of his or her works.

(ii) *Address and name change.* Subsection (c) of § 253.3 provides that "[i]n the event that the legal name and/or address of the claimant changes after the filing of a claim, the claimant shall notify the Copyright Office of such change within 30 days of the change." Failure to provide this notification could, under certain circumstances, make the claim subject to dismissal. Copyright Owners request that subsection (c) be deleted in its entirety because "it could be an unnecessary draconian trap for the unwary (or wary) claimant." Copyright Owners, comment at 25.

It is not the intention of the Copyright Office that subsection (c) should be used to dismiss otherwise valid claims. The concern is that the Office must be able to communicate with the claimants, especially if an action requires prompt disposition. To take one example, suppose one party files a motion to dismiss another party's claim, and the Copyright Office asks the claimant to respond to the motion; the claimant has moved and there is no response. There would be no means to find out whether the first party's motion is valid in that situation. Subsection (c) is intended to give the Office authority to dismiss for failure to prosecute a claim in cases where the Office was not given timely notice of the change of address or name.

At the same time, we acknowledge the possibility that the 30-day deadline for

notifying the Office of an address or name change could work hardships. We have therefore amended subsection (c) to provide that dismissal may only occur after the Office has made a good faith attempt to communicate with the claimant, and the effort failed because the claimant did not inform the Office of a change in legal name or address.

(2) *Compliance with statutory dates.* Section 252.4 implements the statutory requirement that cable claims must be made in the month of July for royalties from the preceding calendar year. Subsection (b) provides that a cable claim is timely filed if it is mailed with the U.S. Postal Service and bears a U.S. postmark during the month of July.

(i) *Comments of copyright owners: Canadian and Mexican mailings.* The Copyright Owners have asked that the provision for a July U.S. postmark be expanded to include mailings from Canadian and Mexican post offices. Copyright Owners, comment at 25. The Copyright Owners did not document their request, and the Office is uncertain about the authority or feasibility of acceding to it. We have therefore decided not to accept the Copyright Owners' proposed amendment at this time, but we invite them, and any other interested parties, to provide further information and comments on the question.

(ii) *Amendments of § 252.4.* After reviewing the timeliness requirement, we have decided to add a new subsection (b) to § 252.4, in recognition of § 703 of the Copyright Code.¹⁶ The new subsection provides that, when the last day of July falls on a Saturday, Sunday, holiday, or other nonbusiness day in the District of Columbia or the Federal Government, the Copyright Office will accept claims received in the Office on the first business day in August, and will also accept claims bearing a U.S. postmark dated on the first August business day.

The Copyright Office is also amending § 252.4 by making a consequential change in subsection (c), and by adding new subsections (d) and (e). Subsection (d) provides that no claim may be filed by facsimile transmission. Under new subsection (e), parties whose claims were not timely received by the Office will be given an opportunity to offer proof of delivery. A claimant who sent

¹⁵ It is clear that under § 302.7 of the former Tribunal's rules each joint claimant was required to identify at least one secondary transmission of its copyrighted works.

¹⁶ Section 703 of the Copyright Code states, "In any case in which time limits are prescribed under this title for the performance of an action in the Copyright Office, and in which the last day of the prescribed period falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, the action may be taken on the next succeeding business day, and is effective as of the date when the period expired."

a claim which was properly addressed¹⁷ and properly mailed, but which was nonetheless received late by the Copyright Office or was not received at all, may still be able to prove the validity of his or her filing. If the claim was sent by certified mail, return receipt requested, we will accept the claim if the claimant can produce the receipt showing that it was properly mailed. We will not accept as evidence either the affidavit of an officer or employee of the claimant, or the affidavit of a U.S. postal worker.

(3) *Proof of fixation of works.* Section 252.5 of our earlier interim regulation, which was imported from the CRT rules, provided a detailed procedure for proving fixation of a work for which a cable claim had been filed. The Copyright Owners have asked that the section be deleted in its entirety because it is no longer necessary. Copyright Owners, comment at 25. The Copyright Office agrees. If there are any future controversies involving whether a work was fixed in a tangible medium, they can be resolved under the general authority of the Library and the CARPs to issue dispositive determinations during the course of a proceeding.

(4) *Copies of claims.* In place of "Proof of fixation of works," the Copyright Office is adopting a new text in § 252.5. The new section provides that all claimants must submit an original and two copies of their claims to cable royalty fees.

(i) *Part 257—Filing of Claims to Satellite Carrier Royalty Fees*

Although none of the commentators requested any changes in part 257, the Copyright Office is making several amendments modeled after, and for the same reasons as, the changes made in part 252. Subsection 257.3(a)(4) is amended, and subsection (e) is deleted, to clarify that each claimant in a joint claim must identify at least one secondary transmission of his or her works. (See the discussion of filing of cable claims under § 252.3 above.) Subsection (c) is amended to allow the Copyright Office to dismiss a claim if it has made a good faith effort to contact a claimant, but has failed because the claimant has not informed the Office of a change in name or address. Section 251.4—Compliance with Statutory Dates—is amended by allowing claimants to file on the first business day in August whenever July 31 falls on a non-business day, adding a prohibition of submission of claims by facsimile transmission, and allowing

claimants to offer proof of mailing for claims properly mailed but not received by the Copyright Office. Finally, § 251.5—Proof of Fixation of Works—is eliminated and replaced with a provision requiring claimants to submit an original and two copies of each claim to satellite carrier royalty fees.

(j) *Part 259—Filing of Claims to Digital Audio Recording Devices and Media Royalty Payments*

Corresponding to our amendments to the rules for filing cable and satellite claims, we are making the same changes with regard to filing a DART claim. Section 259.3(c) removes the provision for requiring name and address changes to be filed within 30 days, and replaces it with a general obligation to report changes. Section 259.4 is amended by adding a new subsection (e) which prohibits the filing by facsimile transmission of the notice of appointment of an independent administrator. Section 259.5 is changed to allow claimants to file on the first business day in March whenever the last day in February falls on a Federal Government nonbusiness day, to prohibit the filing of claims by facsimile transmission, and to allow claimants who send their claims by certified mail, return receipt requested, to offer proof of mailing if the Copyright Office has not timely received the claim. A new section § 259.6, modeled after § 252.6 and § 257.5, is added to part 259 requiring the filing of an original and two copies of claims to DART royalties.

Appendix A to Subpart D—Standards of Conduct

Note: The following Appendix will not appear in the Code of Federal Regulations.

We use this Appendix to offer ten examples of hypothetical situations that are intended to probe the proper extent of the restrictions on financial interests. Many of them refer to Phase I or Phase II of the former Tribunal's cable proceedings. This is not intended to presume the actual structure of the CARP proceedings, but rather to improve the quality of the comments by providing concrete situations.

§ 251.31(a)(1)

Example 1: An arbitrator is being considered for a cable controversy among five Phase I categories. He has a financial interest in a claimant that is in one of the other Phase I categories which has settled its interest in the proceeding. Does he have a financial conflict of interest?

Example 2: An arbitrator is being considered for a Phase I cable controversy that includes the Commercial Television Station category. She has a financial interest

in a commercial broadcast station. However, the station is not a claimant in the proceeding because it is not carried as a distant signal by any cable system. Does she have a financial conflict of interest?

Example 3: An arbitrator is being considered for a cable controversy in which there is a complete Phase I settlement, but there is one Phase II controversy. He has a financial interest in a claimant outside of the Phase II category that has the controversy. Does he have a financial conflict of interest?

Example 4: An arbitrator has a financial interest in a motion picture production company which does not file a claim for cable royalties. However, the distributor who syndicates the company's movies to television does file claims for royalties, and remits to the film producer a percentage of all his syndication revenues. Does the arbitrator have a financial conflict of interest?

§ 251.31(a)(2)

Example 5: An arbitrator is being considered for a cable rate adjustment proceeding that would review the 3.75% rate. She has a financial interest in a cable system that grosses less than \$292,000 per half year. The 3.75% rate only applies to cable systems that gross more than \$292,000 per half year. Does she have a financial conflict of interest?

Example 6: An arbitrator is being considered for a cable rate adjustment proceeding that would review the 3.75%. He has a financial interest in a cable network which negotiates carriage on cable systems in the private marketplace. Does he have a financial conflict of interest?

§ 251.31(b)

Example 7: An arbitrator is being considered for a satellite carrier distribution proceeding. He is an affiliate of a performing rights society, and receives, on average, \$100 a year for a song he wrote 30 years ago. Does he have a financial conflict of interest?

§ 251.31(c)(1)

Example 8: An arbitrator is being considered for a mechanical rate adjustment hearing. He has a stock mutual fund which is currently invested in several recording companies. Does he have a financial conflict of interest?

§ 251.31(c)(2)

Example 9: An arbitrator is being considered for a Phase I cable distribution proceeding. From 1960 to 1970, she worked for a program syndicator. She is now receiving a fixed pension from the syndicator for her ten years' work. Does she have a financial conflict of interest?

§ 251.36(c)

Example 10: An arbitrator has presided over a cable rate adjustment proceeding which reviewed the 3.75% rate. The time for all appeals has passed, and no one has appealed. The arbitrator returns to private practice and a cable system wants to hire the arbitrator to be its attorney on matters before the FCC. During the proceeding, the cable industry was represented by NCTA and CATA. The cable system that wants to hire

¹⁷ A claim addressed to the former Tribunal will not be considered properly addressed.

the arbitrator was not a party to the proceeding, nor did it authorize NCTA or CATA to represent it in the proceeding; however, the cable system was affected by the change in the 3.75% rate. Can the arbitrator take the cable system on as a client?

List of Subjects

37 CFR Parts 251 and 301

Administrative practice and procedure, Hearing and appeal procedures.

37 CFR Parts 252 and 302

Cable television, Claims, Copyright.

37 CFR Parts 253 and 304

Copyright, Music, Radio, Rates, Television.

37 CFR Parts 254 and 306

Copyright, Jukeboxes, Rates.

37 CFR Parts 255 and 307

Copyright, Music, Recordings.

37 CFR Parts 256 and 308

Cable television, Rates.

37 CFR Parts 257 and 309

Cable television, Claims.

37 CFR Parts 258 and 310

Copyright, Satellite.

37 CFR Parts 259 and 311

Claims, Copyright, Digital audio recording devices, and Media.

37 CFR Parts 303

Copyright, Jukeboxes.

37 CFR Parts 305

Claims, Jukeboxes.

Interim Rules

For the reasons set out in the preamble, 37 CFR chapters II and III are amended under authority of 17 U.S.C. 802(d) as follows:

1. Part 301 of chapter III is removed.

1a. Existing parts 201 through 211 are designated as subchapter A, and a new heading for subchapter A is added to read as follows: Subchapter A—Copyright Office and Procedures.

1b. New subchapter B—Copyright Arbitration Royalty Panel Rules and Procedures—is added to chapter II consisting of parts 251–259.

2. A new part 251 is added to subchapter B of chapter II to read as follows:

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

Subpart A—Organization

Sec.

- 251.1 Official address.
- 251.2 Purpose of Copyright Arbitration Royalty Panels.
- 251.3 Arbitrator lists.
- 251.4 Arbitrator lists: Objections.
- 251.5 Qualifications of the arbitrators.
- 251.6 Composition and selection of Copyright Arbitration Royalty Panels.
- 251.7 Actions of Copyright Arbitration Royalty Panels.
- 251.8 Suspension of Proceedings.

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

- 251.11 Open meetings.
- 251.12 Conduct of open meetings.
- 251.13 Closed meetings.
- 251.14 Procedure for closed meetings.
- 251.15 Transcripts of closed meetings.
- 251.16 Requests to open or closed meetings.

Subpart C—Public Access to and Inspection of Records

- 251.21 Public records.
- 251.22 Public access.
- 251.23 FOIA and Privacy Act.

Subpart D—Standards of Conduct

- 251.30 Basic obligations of arbitrators.
- 251.31 Financial interests.
- 251.32 Financial disclosure statement.
- 251.33 Ex parte communications.
- 251.34 Gifts and other things of monetary value.
- 251.35 Outside employment and other activities.
- 251.36 Pre-arbitration and post-arbitration employment restrictions.
- 251.37 Use of nonpublic information.
- 251.38 Billing and commitment to standards.
- 251.39 Remedies.

Subpart E—Procedures of Copyright Arbitration Royalty Panels

- 251.40 Scope.
- 251.41 Formal hearings.
- 251.42 Suspension or waiver of rules.
- 251.43 Written cases.
- 251.44 Filing and service of written cases and pleadings.
- 251.45 Precontroversy motions, and discovery.
- 251.46 Conduct of hearings: Role of arbitrators.
- 251.47 Conduct of hearings: Witnesses and counsel.
- 251.48 Rules of evidence.
- 251.49 Transcript and record.
- 251.50 Rulings and orders.
- 251.51 Closing the hearing.
- 251.52 Proposed findings and conclusions.
- 251.53 Report to the Librarian of Congress.
- 251.54 Assessment of costs of arbitration panels.
- 251.55 Post-panel motions.
- 251.56 Order of the Librarian of Congress.
- 251.57 Effective date of order.
- 251.58 Judicial review.

Subpart F—Rate Adjustment Proceedings

- 251.60 Scope.
- 251.61 Commencement of adjustment proceedings.
- 251.62 Content of petition.
- 251.63 Period for consideration.
- 251.64 Disposition of petition: Initiation of arbitration proceeding.
- 251.65 Deduction of costs of rate adjustment proceedings.

Subpart G—Royalty Fee Distribution Proceedings

- 251.70 Scope.
- 251.71 Commencement of proceedings.
- 251.72 Determination of controversy.
- 251.73 Declaration of controversy: Initiation of arbitration proceeding.
- 251.74 Deduction of costs of distribution proceedings.

Authority: 17 U.S.C. 801–803.

Subpart A—Organization

§ 251.1 Official address.

Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

§ 251.2 Purpose of Copyright Arbitration Royalty Panels.

The Librarian of Congress, upon the recommendation of the Register of Copyrights, may appoint and convene a Copyright Arbitration Royalty Panel (CARP) for the following purposes:

(a) To make determinations concerning copyright royalty rates for the cable compulsory license, 17 U.S.C. 111.

(b) To make determinations concerning copyright royalty rates for making and distributing phonorecords, 17 U.S.C. 115.

(c) To make determinations concerning copyright royalty rates for coin-operated phonorecord players (jukeboxes) whenever a negotiated license authorized by 17 U.S.C. 116 expires or is terminated and is not replaced by another such license agreement.

(d) To make determinations concerning royalty rates and terms for the use by noncommercial educational broadcast stations of certain copyrighted works, 17 U.S.C. 118.

(e) To distribute cable and satellite carrier royalty fees and digital audio recording devices and media payments under 17 U.S.C. 111, 119, and chapter 10, respectively, deposited with the Register of Copyrights.

§ 251.3 Arbitrator lists.

(a) Any professional arbitration association or organization may submit, on or before May 6, 1994, and before January 1 of each year thereafter, a list of persons qualified to serve as arbitrators on a Copyright Arbitration

Royalty Panel. The list shall contain the following for each person:

- (1) The full name, address, and telephone number of the person.
- (2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of the facts and information which qualify the person to serve as an arbitrator under § 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant.

(b) After May 6, 1994, and after January 1 of each year thereafter, the Librarian of Congress shall publish in the **Federal Register** a list of at least 30, but not more than 75 persons, submitted to the Librarian from at least three professional arbitration associations or organizations. The persons so listed must satisfy the qualifications and requirements of this subchapter and can reasonably be expected to be available to serve as arbitrators on a Copyright Arbitration Royalty Panel during that calendar year. This list will constitute the "arbitrator list" referred to in this subchapter. With respect to persons on the arbitrator list, the Librarian will make available for copying and inspection the information provided under paragraph (a) of this section.

§ 251.4 Arbitrator lists: Objections.

(a) In the case of a rate adjustment proceeding, any party to a proceeding may, during the 30-day period specified in § 251.63, file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for that proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

(b) In the case of a royalty distribution proceeding, any party to the proceeding may, during the 30-day time period specified in § 251.45(a), file an objection with the Librarian of Congress to one or more of the persons contained on the arbitrator list for the proceeding. Such objection shall plainly state the grounds and reasons for each person claimed to be objectionable.

§ 251.5 Qualifications of the arbitrators.

In order to serve as an arbitrator to a Copyright Arbitration Royalty Panel, a person must, at a minimum, have the following qualifications:

- (a) Admitted to the practice of law in any state, territory, trust territory, or possession of the United States.
- (b) Ten or more years of legal practice.
- (c) Experience in conducting arbitration proceedings or facilitating the resolution and settlement of disputes.

§ 251.6 Composition and selection of Copyright Arbitration Royalty Panels.

(a) Within ten days after publication of a notice in the **Federal Register** initiating arbitration proceedings under this subchapter, the Librarian of Congress will, upon recommendation of the Register of Copyrights, select two arbitrators from the arbitrator list for that calendar year.

(b) The two arbitrators so selected shall, within 10 days of their selection, choose a third arbitrator from the same arbitrator list. The third arbitrator shall serve as the chairperson of the panel during the course of the proceedings.

(c) If the two arbitrators fail to agree upon the selection of the third, the Librarian will promptly select the third arbitrator from the same arbitrator list.

(d) The third arbitrator so chosen shall serve as the chairperson of the panel during the course of the proceeding. In all matters, procedural or substantive, the chairperson shall act according to the majority wishes of the panel.

(e) Two arbitrators shall constitute a quorum necessary to the determination of any proceeding.

(f) If, before the commencement of hearings in a proceeding, one or more of the arbitrators is unable to continue service on the CARP, the Librarian will suspend the proceeding as provided by § 251.8, and will inaugurate a procedure to bring the CARP up to the full complement of three arbitrators. Where one or two vacancies exist, and either or both of the vacant seats were previously occupied by arbitrators selected by the Librarian, the Librarian will select the necessary replacements from the current arbitrator list. If there is one vacancy, and it was previously occupied by the chairperson, the two remaining arbitrators shall select the replacement from the arbitrator list, and the person chosen shall serve as chairperson. If there are two vacant seats, and one of them was previously occupied by the chairperson, the Librarian will select one replacement from the arbitrator list, and that person shall join with the remaining arbitrator to choose the

replacement, who shall serve as chairperson.

(g) After hearings have commenced, the Librarian will not suspend the proceedings or inaugurate a replacement procedure unless it is necessary in order for the CARP to have a quorum. If the hearing is underway and two arbitrators are unable to continue service, or if the hearing had been proceeding with two arbitrators and one of them is no longer able to serve, the Librarian will suspend the proceedings under § 251.8 and seek the unanimous written agreement of the parties to the proceeding for the Librarian to select a replacement. In the absence of such an agreement, the Librarian will terminate the proceeding. If such agreement is obtained, the Librarian will select one arbitrator from the arbitrator list.

(h) If, after hearings have commenced, the chairperson of the CARP is no longer able to serve, the Librarian will ask the two remaining arbitrators, or the one remaining arbitrator and the newly-selected arbitrator, to agree between themselves which of them will serve as chairperson. In the absence of such an agreement, the Librarian will terminate the proceeding.

§ 251.7 Actions of Copyright Arbitration Royalty Panels.

Any action of a Copyright Arbitration Royalty Panel requiring publication in the **Federal Register** according to 17 U.S.C. or the rules and regulations of this subchapter shall be published under the authority of the Librarian of Congress and the Register of Copyrights. Under no circumstances shall a CARP engage in rulemaking designed to amend, supplement, or supersede any of the rules and regulations of this subchapter, or seek to have any such action published in the **Federal Register**.

§ 251.8 Suspension of proceedings.

(a) Where it becomes necessary to replace a selected arbitrator under § 251.6 or to remove and replace a selected arbitrator under subpart D of this part, the Librarian will order a suspension of any ongoing hearing or other proceeding by notice in writing to all parties. Immediately after issuing the order of suspension, and without delay, the Librarian will take the necessary steps to replace the arbitrator or arbitrators, and upon such replacement will issue an order, by notice in writing to all parties, resuming the proceeding from the time and point at which it was suspended.

(b) Where, for any other reason, such as a serious medical or family emergency affecting an arbitrator, the

Librarian considers a suspension of a proceeding necessary and fully justified, he may, with the unanimous written consent of all parties to the proceeding, order a suspension of the proceeding for a stated period not to exceed one month.

(c) Any suspension under this section shall result in a complete cessation of all aspects of the proceeding, including the running of any period provided by statute for the completion of the proceeding.

Subpart B—Public Access to Copyright Arbitration Royalty Panel Meetings

§ 251.11 Open meetings.

(a) All meetings of a Copyright Arbitration Royalty Panel shall be open to the public, with the exception of meetings that are listed in § 251.13.

(b) At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the *Federal Register* at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings are to be closed, and, if so, which ones, and the name and telephone number of the person to contact for further information.

(c) If changes are made to the original schedule, they will be announced in open meeting and issued as orders to the parties participating in the proceeding, and the changes will be noted in the docket file of the proceeding.

In addition, the contact person for the proceeding shall make any additional efforts to publicize the change as are practicable.

(d) If it is decided that the publication of the original schedule must be made on shorter notice than seven days, that decision must be made by a recorded vote of the panel and included in the announcement.

§ 251.12 Conduct of open meetings.

Meetings of a Copyright Arbitration Royalty Panel will be conducted in a manner to ensure the greatest degree of openness possible. Reasonable access for the public will be provided at all public sessions. Any person may take photographs, and make audio or video recordings of the proceedings, so long as the panel is informed in advance. The chairperson has the discretion to regulate the time, place, and manner of the taking of photographs or the audio or video recording of the proceedings to ensure the order and decorum of the proceedings. The right of the public to

be present does not include the right to participate or make comments.

§ 251.13 Closed meetings.

In the following circumstances, a Copyright Arbitration Royalty Panel may close its meetings or withhold information from the public:

(a) If the matter to be discussed has been specifically authorized to be kept secret by Executive Order, in the interests of national defense or foreign policy; or

(b) If the matter relates solely to the internal practices of a Copyright Arbitration Royalty Panel; or

(c) If the matter has been specifically exempted from disclosure by statute (other than 5 U.S.C. 552) and there is no discretion on the issue; or

(d) If the matter involves privileged or confidential trade secrets or financial information; or

(e) If the result might be to accuse any person of a crime or formally censure him or her; or

(f) If there would be clearly unwarranted invasion of personal privacy; or

(g) If there would be disclosure of investigatory records compiled for law enforcement, or information that if written would be contained in such records, and to the extent disclosure would:

(1) Interfere with enforcement proceedings; or

(2) Deprive a person of the right to a fair trial or impartial adjudication; or

(3) Constitute an unwarranted invasion of personal privacy; or

(4) Disclose the identity of a confidential source or, in the case of a criminal investigation or a national security intelligence investigation, disclose confidential information furnished only by a confidential source; or

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or safety of law enforcement personnel.

(h) If premature disclosure of the information would frustrate a Copyright Arbitration Royalty Panel's action, unless the panel has already disclosed the concept or nature of the proposed action, or is required by law to make disclosure before taking final action; or

(i) If the matter concerns a CARP's participation in a civil action or proceeding or in an action in a foreign court or international tribunal, or an arbitration, or a particular case of formal agency adjudication pursuant to 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing; or

(j) If a motion or objection has been raised in an open meeting and the panel

determines that it is in the best interests of the proceeding to deliberate on such motion or objection in closed session.

§ 251.14 Procedure for closed meetings.

(a) Meetings may be closed, or information withheld from the public, only by a recorded vote of a majority of arbitrators of a Copyright Arbitration Royalty Panel. Each question, either to close a meeting or to withhold information, must be voted on separately, unless a series of meetings is involved, in which case the CARP may vote to keep the discussions closed for 30 days, starting from the first meetings. If the CARP feels that information about a closed meeting must be withheld, the decision to do so must also be the subject of a recorded vote.

(b) Before a discussion to close a meeting or withhold information, the chairperson of a CARP must certify that such an action is permissible, and the chairperson shall cite the appropriate exemption under § 251.13. This certification shall be included in the announcement of the meeting and be maintained as part of the record of proceedings of that CARP.

(c) Following such a vote, the following information shall be published in the *Federal Register* as soon as possible:

(1) The vote of each arbitrator; and

(2) The appropriate exemption under § 251.13; and

(3) A list of all persons expected to attend the meeting and their affiliation.

§ 251.15 Transcripts of closed meetings.

(a) All meetings closed to the public shall be subject either to a complete transcript or, in the case of § 251.13(h) and at the discretion of the Copyright Arbitration Royalty Panel, detailed minutes. Detailed minutes shall describe all matters discussed, identify all documents considered, summarize action taken as well as the reasons for it, and record all roll call votes as well as any views expressed.

(b) Such transcripts or minutes shall be kept by the Copyright Office for at least two years, or for at least one year after the conclusion of the proceedings, whichever is later. Any portion of transcripts of meetings which the chairperson of a CARP does not feel is exempt from disclosure under § 251.13 will ordinarily be available to the public within 20 working days of the meeting. Transcripts or minutes of closed meetings will be reviewed by the chairperson at the end of the proceedings of the panel and, if at that time the chairperson determines that they should be disclosed, he or she will

resubmit the question to the CARP to gain authorization for their disclosure.

§ 251.16 Requests to open or close meetings.

(a) Any person may request a Copyright Arbitration Royalty Panel to open or close a meeting or disclose or withhold information. Such request must be captioned "Request to Open" or "Request to Close" a meeting on a specified date concerning a specific subject. The person making the request must state his or her reasons, and include his or her name, address, and telephone number.

(b) In the case of a request to open a meeting that a CARP has previously voted closed, the panel must receive the request within 3 working days of the meeting's announcement. Otherwise the request will not be heeded, and the person making the request will be so notified. An original and three copies of the request must be submitted.

(c) For a CARP to act on a request to open or close a meeting, the question must be brought to a vote before the panel. If the request is granted, an amended meeting announcement will be issued and the person making the request notified. If a vote is not taken, or if after a vote the request is denied, said person will also be notified promptly.

Subpart C—Public Access to and Inspection of Records

§ 251.21 Public records.

(a) All official determinations of a Copyright Arbitration Royalty Panel will be published in the *Federal Register* in accordance with § 251.7 and include the relevant facts and reasons for those determinations.

(b) All records of a CARP, and all records of the Librarian of Congress assembled and/or created under 17 U.S.C. 801 and 802, are available for inspection and copying at the address provided in § 251.1 with the exception of:

(1) Records that relate solely to the internal personnel rules and practices of the Copyright Office or the Library of Congress;

(2) Records exempted by statute from disclosure;

(3) Interoffice memoranda or correspondence not available by law except to a party in litigation with a CARP, the Copyright Office, or the Library of Congress;

(4) Personnel, medical, or similar files whose disclosure would be an invasion of personal privacy;

(5) Communications among arbitrators of a CARP concerning the drafting of

decisions, opinions, reports, and findings on any CARP matter or proceeding;

(6) Communications among the Librarian of Congress and staff of the Copyright Office or Library of Congress concerning decisions, opinions, reports, selection of arbitrators, or findings on any matter or proceeding conducted under 17 U.S.C. chapter 8;

(7) Offers of settlement that have not been accepted, unless they have been made public by the offeror;

(8) Records not herein listed but which may be withheld as "exempted" if a CARP or the Librarian of Congress finds compelling reasons for such action.

§ 251.22 Public access.

(a) *Location of Records.* All of the following records relating to rate adjustment and distribution proceedings under this subchapter shall be maintained at the Copyright Office:

(1) Records required to be filed with the Copyright Office; or

(2) Records submitted to or produced by the Copyright Office or Library of Congress under 17 U.S.C. 801 and 802, or

(3) Records submitted to or produced by a Copyright Arbitration Royalty Panel during the course of a concluded proceeding. In the case of records submitted to or produced by a CARP that is currently conducting a proceeding, such records shall be maintained by the chairperson of that panel at the location of the hearing or at a location specified by the panel. Upon conclusion of the proceeding, all records shall be delivered by the chairperson to the Copyright Office.

(b) *Requesting information.* Requests for information or access to records described in § 251.21 shall be directed to the Copyright Office at the address listed in § 251.1. No requests shall be directed to or accepted by a Copyright Arbitration Royalty Panel. In the case of records in the possession of a CARP, the Copyright Office shall make arrangements with the panel for access and copying by the person making the request.

(c) *Fees.* Fees for photocopies of CARP or Copyright Office records are \$0.40 per page. Fees for searching for records, certification of documents, and other costs incurred are as provided in 17 U.S.C. 705, 708.

§ 251.23 FOIA and Privacy Act.

Freedom of Information Act and Privacy Act provisions applicable to CARP proceedings can be found in parts 203 and 204 of subchapter A of this chapter.

Subpart D—Standards of Conduct

§ 251.30 Basic obligations of arbitrators.

(a) *Definitions.* For purposes of these regulations, the following terms shall have the meanings given in this subsection:

(1) A "selected arbitrator" is a person named by the Librarian of Congress, or by other selected arbitrators, for service on a particular CARP panel, in accordance with § 251.6 of these regulations;

(2) A "listed arbitrator" is a person named in the "arbitration list" published in accordance with § 251.3 of these regulations.

(b) *General principles applicable to arbitrators.* Selected arbitrators are persons acting on behalf of the United States, and the following general principles apply to them. Where a situation is not covered by standards set forth specifically in this subpart, selected arbitrators shall apply these general principles in all cases in determining whether their conduct is proper. Listed arbitrators shall apply these principles where applicable.

(1) Arbitrators are engaged in a matter of trust that requires them to place ethical and legal principles above private gain.

(2) Arbitrators shall not hold financial interests that conflict with the conscientious performance of their service.

(3) Arbitrators shall not engage in financial transactions using nonpublic information or allow the improper use of such information to further any private interest.

(4) Selected arbitrators shall not solicit or accept any gift or other item of monetary value from any person or entity whose interests may be affected by the arbitrators' decisions. Listed arbitrators may accept gifts of nominal value or gifts from friends and family as specified in § 251.34(b).

(5) Arbitrators shall put forth their honest efforts in the performance of their service.

(6) Arbitrators shall act impartially and not give preferential treatment to any individual, organization, or entity whose interests may be affected by the arbitrators' decisions.

(7) Arbitrators shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflicts with the performance of their service.

(8) Arbitrators shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this subpart.

(9) Arbitrators shall maintain order and decorum in the proceedings, be

patient, dignified, and courteous to the parties, witnesses, and their representatives, and dispose promptly the business before them.

§ 251.31 Financial interests.

(a) No selected arbitrator shall have a direct or indirect financial interest—

(1) in the case of a distribution proceeding, in any claimant to the proceeding whether or not in a voluntary settlement agreement, or any copyright owner who receives royalties from such claimants because of their representation;

(2) in the case of a rate adjustment proceeding, in any individual, organization or entity that would be affected by the outcome of the proceeding.

(b) "Direct or indirect financial interest" shall include: being employed by, being a consultant to, being a representative or agent for, being a member or affiliate of, being a partner of, holding any office in, owning any stocks, bonds, or other securities, or deriving any income from the prohibited entity.

(c) "Direct or indirect financial interest" shall not include—

(1) owning shares in any stock or bond mutual fund or blind trust which might have an interest in a prohibited entity but whose decisions to invest or sell is not under the control of the selected arbitrator, or

(2) receiving any post-employment benefit such as health insurance or a pension so long as the benefit would not be affected by the outcome of the proceeding.

(d) For the purposes of this section, the financial interest of the following persons will serve to disqualify the selected arbitrator to the same extent as if they were the arbitrator's own interests:

- (1) the arbitrator's spouse;
- (2) the arbitrator's minor child;
- (3) the arbitrator's general partner; or
- (4) an organization or entity which the arbitrator serves as officer, director, trustee, general partner or employee.

§ 251.32 Financial disclosure statement.

(a) Each year, within one month of publication in the Federal Register of the list of available arbitrators, each listed arbitrator shall file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress, which statement shall be reviewed by the Librarian and designated Library staff to determine what conflicts of interest, if any, exist according to § 251.30.

(b) If any conflicts of interest do exist, the Librarian shall not choose that

person for the proceeding for which he or she has the financial conflict, except—

(1) the listed arbitrator may divest himself or herself of the interest that caused the disqualification, and become qualified to serve, or

(2) the listed arbitrator may disclose on the record the conflict of interest causing disqualification and may ask the parties to consider whether to allow him or her to serve in the proceeding. Any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

(c) At such time as the two selected arbitrators choose a third arbitrator, they shall consult with the Librarian to determine if any conflicts of interest exist for the third arbitrator. If, in the opinion of the Librarian of Congress, any conflicts of interest do exist, the two selected arbitrators shall be asked to choose another arbitrator who has no conflict of interest.

(d) Within one week of the selection of the CARP panel, the three selected arbitrators shall file with the Librarian an updated confidential financial disclosure form or, if there are any changes in the arbitrator's financial interests, a statement to that effect. If any conflicts of interest are revealed on the updated form, the Librarian will suspend the proceeding and replace the selected arbitrator with another arbitrator from the arbitrator list in accordance with the provision of § 251.6.

(e) During the following periods of time, the selected arbitrators shall be obliged to inform the Librarian immediately of any change in their financial interests that would reasonably raise a conflict of interest—

(1) during the period beginning with the filing of the updated disclosure form or statement required by paragraph (d) of this section and ending with the submission of the panel's report to the Librarian, and

(2) if the same arbitrator or arbitrators are recalled to serve following a court-ordered remand, during the time the panel is reconvened.

(f) If the Librarian determines that an arbitrator has failed to give timely notice of a financial interest constituting a conflict of interest, or that the arbitrator in fact has a conflict of interest, the Librarian shall remove that arbitrator from the proceeding.

§ 251.33. Ex parte communications.

(a) *Communications with Librarian or Register.* No person outside the Library of Congress shall engage in ex parte communication with the Librarian of

Congress or the Register of Copyrights on the merit or status of any matter, procedural or substantive, relating to the distribution of royalty fees, the adjustment of royalty rates or the status of digital audio recording devices, at any time whatsoever. This prohibition shall not apply to statements concerning public policies related to royalty fee distribution and rate adjustment so long as they are unrelated to the merits of any particular proceeding.

(b) *Selected arbitrators.* No interested party shall engage in, or cause someone else to engage in, ex parte communications with the selected arbitrators in a proceeding for any reason whatsoever from the time of their selection to the time of the submission of their report to the Librarian, and, in the case of a remand, from the time of their reconvening to the time of their submission of their report to the Librarian.

(c) *Listed arbitrators.* No interested party shall engage in, or cause someone else to engage in, ex parte communications with any person listed by the Librarian of Congress as qualified to serve as a arbitrator about the merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition applies during any period when the individual appears on a current arbitrator list.

(d) *Library and Copyright Office personnel.* No person outside the Library of Congress (including the Copyright Office staff) shall engage in ex parte communications with any employee of the Library of Congress about the substantive merits of any past, pending, or future proceeding relating to the distribution of royalty fees or the adjustment of royalty rates. This prohibition does not apply to procedural inquiries such as scheduling, filing requirements, status requests, or requests for public information.

(e) *Outside contacts.* The Librarian of Congress, the Register of Copyrights, the selected arbitrators, the listed arbitrators, and the employees of the Library of Congress described in paragraphs (a) through (d) of this section, shall not initiate or continue the prohibited communications that apply to them.

(f) *Responsibilities of recipients of communication.* (1) Whoever receives a prohibited communication shall immediately end it and place on the public record of the applicable proceeding: (i) all such written or recorded communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (f)(1) (i) and (ii) of this section.

(2) The materials described in this paragraph (f) shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(g) *Action by Librarian.* When notice of a prohibited communication described in paragraphs (a) through (d) of this section has been placed in the record of a proceeding, either the Librarian of Congress or the CARP may require the party causing the prohibited communication to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected.

§ 251.34 Gifts and other things of monetary value.

(a) *Selected arbitrators.* From the time of selection to the time of the submission of the arbitration panel's report, whether during the initial proceeding or during a court-ordered remand, no selected arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest that would be affected by the outcome of the proceeding, regardless of whether the offer was intended to affect the outcome of the proceeding.

(b) *Listed arbitrators.* No listed arbitrator shall solicit or accept, directly or indirectly, any gift, gratuity, favor, travel, entertainment, service, loan, or any other thing of monetary value from a person or organization that has an interest in any proceeding for which the arbitrator might be selected, regardless of whether the offer was intended to affect the outcome of the proceeding, except—

(1) a listed arbitrator may accept unsolicited gifts having an aggregate market value of \$20 or less per occasion, as long as the aggregate market value of individual gifts received from any one source does not exceed \$50 in a calendar year, or

(2) a listed arbitrator may accept a gift given under circumstances in which it is clear that the gift is motivated by a family relationship or personal friendship rather than the potential of the listed arbitrator to decide a future proceeding.

(c) A gift that is solicited or accepted indirectly includes a gift—

(1) given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse,

child, or dependent relative because of that person's relationship to the arbitrator, or

(2) given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

§ 251.35 Outside employment and other activities.

(a) From the time of selection to the time when all possibility of being selected to serve on a court-ordered remand is ended, no arbitrator shall—

(1) engage in any outside business or other activity that would cause a reasonable person to question the arbitrator's ability to render an impartial decision;

(2) accept any speaking engagement, whether paid or unpaid, related to the proceeding or sponsored by a party that would be affected by the outcome of the proceeding; or

(3) accept any honorarium, whether directly or indirectly paid, for any appearance, speech, or article related to the proceeding or offered by a party who would be affected by the outcome of the proceeding.

(b) Honoraria indirectly paid include payments—

(1) given with the arbitrator's knowledge and acquiescence to the arbitrator's parent, sibling, spouse, child, or dependent relative because of that person's relationship to the arbitrator, or

(2) given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the arbitrator.

§ 251.36 Pre-arbitration and post-arbitration employment restrictions.

(a) The Librarian of Congress will not select any arbitrator who was employed at any time during the period of five years immediately preceding the date of that arbitrator's selection by any party to, or any person, organization or entity with a financial interest in, the proceeding for which he or she is being considered. However, a listed arbitrator may disclose on the record the past employment causing disqualification and may ask the parties to consider whether to allow him or her to serve in the proceeding, in which case any agreement by the parties to allow the listed arbitrator to serve shall be unanimous and shall be incorporated into the record of the proceeding.

(b) No arbitrator may arrange for future employment with any party to, or any person, organization, or entity with a financial interest in, the proceeding in which he or she is serving.

(c) For a period of three years from the date of submission of the arbitration panel's report to the Librarian, no arbitrator may enter into employment with any party to, or any person, organization, or entity with a financial interest in, the particular proceeding in which he or she served.

(d) For purposes of this section, "employed" or "employment" means any business relationship involving the provision of personal services including, but not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee, but does not include serving as an arbitrator, mediator, or neutral engaged in alternative dispute resolution.

§ 251.37 Use of nonpublic information.

(a) Unless required by law, no arbitrator shall disclose in any manner any information contained in filings, pleadings, or evidence that the arbitration panel has ruled to be confidential in nature.

(b) Unless required by law, no arbitrator shall disclose in any manner—

(1) intra-panel communications or communications between the Library of Congress and the panel intended to be confidential;

(2) draft interlocutory rulings or draft decisions; or

(3) the CARP report before its submission to the Librarian of Congress.

(c) No arbitrator shall engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information, to further his or her private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

§ 251.38 Billing and commitment to standards.

(a) Arbitrators are bound by the hourly or daily fee they proposed to the Librarian of Congress when their names were submitted to be listed under § 251.3, and shall not bill in excess of their proposed charges.

(b) Arbitrators shall not charge the parties any expense in addition to their hourly or daily charge, except, in the case of an arbitrator who resides outside the Washington, DC metropolitan area, travel, lodging, and meals not to exceed the government rate.

(c) When submitting their statement of costs to the parties under § 251.54, arbitrators shall include a detailed account of their charges, including the work performed during each hour or day charged.

(d) Except for support services provided by the Library of Congress,

arbitrators shall perform their own work, including research, analysis of the record, and decision-writing.

(e) At the time of selection, arbitrators shall sign an agreement stating that they will abide by all the terms therein, including all of the standards of conduct and billing restrictions specified in this subpart. Any arbitrator who does not sign the agreement will not be selected to serve.

§ 251.39 Remedies.

In addition to those provided above, remedies for the violation of the standards of conduct of this section may include, but are not limited to, the following—

(a) in the case of a selected arbitrator,
(1) removal of the arbitrator from the proceeding;

(2) permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(3) referral of the matter to the bar of which the arbitrator is a member.

(b) in the case of a listed but not selected arbitrator—

(1) permanent removal of the arbitrator's name from the current and any future list of available arbitrators published by the Librarian;

(2) referral of the matter to the bar of which the listed arbitrator is a member.

(c) in the case of an interested party or individual who engaged in the ethical violation—

(1) referral of the matter to the bar or professional association of which the interested individual is a member;

(2) barring the offending individual from current and/or future appearances before the CARP;

(3) designation of an issue in the current or in a future proceeding as to whether the party's interest should not be dismissed, denied, or otherwise adversely affected.

(d) In all applicable matters of violations of standards of conduct, the Librarian may refer the matter to the Department of Justice, or other legal authority of competent jurisdiction, for criminal prosecution.

Subpart E—Procedures of Copyright Arbitration Royalty Panels

§ 251.40 Scope.

This subpart governs the proceedings of Copyright Arbitration Royalty Panels convened under 17 U.S.C. 803 for the adjustment of royalty rates and distribution of royalty fees. This subpart does not apply to other arbitration proceedings specified by 17 U.S.C., or to actions or rulemakings of the Librarian of Congress or the Register of

Copyrights, except where expressly provided in the provisions of this subpart.

§ 251.41 Formal hearings.

(a) The formal hearings that will be conducted under the rules of this subpart are rate adjustment hearings and royalty fee distribution hearings. All parties intending to participate in a hearing of a Copyright Arbitration Royalty Panel must file a notice of their intention. A CARP may also, on its own motion or on the petition of an interested party, hold other proceedings it considers necessary to the exercise of its functions, subject to the provisions of § 251.7. All such proceedings will be governed by the rules of this subpart.

(b) During the 30-day period specified in § 251.45(a) for filing motions in a distribution proceeding, or during the 30-day period described in § 251.63 for settling rate differences, as appropriate, any party may petition the Librarian of Congress to dispense with formal hearings, and have the CARP panel decide the controversy or rate adjustment on the basis of written pleadings. The Librarian, upon recommendation of the Register of Copyrights, may rule on the petition or designate it as an issue to be ruled upon by the CARP. The petition may be granted if—

(1) there is no genuine issue as to any material fact, or

(2) all parties to the controversy agree with the petition.

§ 251.42 Suspension or waiver of rules.

For purposes of an individual proceeding, the provisions of this subpart may be suspended or waived, in whole or in part, by a Copyright Arbitration Royalty Panel upon a showing of good cause, subject to the provisions of § 251.7. Such suspension or waiver shall apply only to the proceeding of the CARP taking that action, and shall not be binding on any other panel or proceeding. Where procedures have not been specifically prescribed in this subpart, and subject to § 251.7, the panel shall follow procedures consistent with 5 U.S.C. chapter 5, subchapter II.

§ 251.43 Written cases.

(a) The proceedings of a Copyright Arbitration Royalty Panel for rate adjustment or royalty fee distribution shall begin with the filing of written direct cases of the parties who have filed a notice of intent to participate in the hearing.

(b) The written direct case shall include all testimony, including each witness's background and

qualifications, along with all the exhibits to be presented in the direct case.

(c) Each party may designate a portion of past records, including records of the Copyright Royalty Tribunal, that it wants included in its direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of the proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where the CARP panel has taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

(f) Written rebuttal cases of the parties shall be filed at a time designated by a CARP upon conclusion of the hearing of the direct case, in the same form and manner as the direct case, except that the claim or the requested rate shall not have to be included if it has not changed from the direct case.

§ 251.44 Filing and service of written cases and pleadings.

(a) *Copies filed with a Copyright Arbitration Royalty Panel.* In all filings with a Copyright Arbitration Royalty Panel, the submitting party shall deliver, in such a fashion as the panel shall direct, an original and three copies to the panel. The submitting party shall also deliver one copy to the Copyright Office at the address listed in § 251.1. In the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, a CARP may reduce the number of copies required by the panel, but a complete copy must still be submitted to the Copyright Office. In no case shall a party tender any written case or pleading by facsimile transmission.

(b) *Copies filed with the Librarian of Congress.* In all pleadings filed with the Librarian of Congress, the submitting party shall deliver an original and five copies to the Copyright Office. In no case shall a party tender any pleading by facsimile transmission.

(c) *English language translations.* In all filings with a CARP or the Librarian

of Congress, each submission that is in a language other than English shall be accompanied by an English-language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English-language translation, similarly verified.

(d) *Affidavits.* The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony.

(e) *Subscription and verification.* (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and shall list the attorney's address and telephone number. All copies shall be conformed. Except for English-language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certification that to the best of his or her knowledge and belief there is good ground to support it, and that it has not been interposed for purposes of delay.

(2) The original of all documents filed by a party not represented by counsel shall be both signed and verified by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with the intent to defeat the purpose of this section, may be stricken as sham and false, and the matter shall proceed as though the document had not been filed.

(f) *Service.* The Librarian of Congress shall compile and distribute to those parties who have filed a notice of intent to participate, the official service list of the proceeding, which shall be composed of the names and addresses of the representatives of all the parties to the proceeding. In all filings with a CARP or the Librarian of Congress, a copy shall be served upon counsel of all other parties identified in the service list, or, if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing with the CARP panel or the Copyright Office. If a party files a pleading that requests or would require action by the panel or the Librarian within 10 or fewer days after the filing, it must serve the pleading upon all other counsel or parties by means no slower than overnight express mail on the same day the pleading is filed. Parties shall notify the Librarian of any change in the name or address to which service shall be made, and shall serve a copy of such

notification on all parties and the CARP panel.

(g) *Oppositions and replies.* Except as otherwise provided in these rules or by the Librarian of Congress or a CARP, oppositions to motions shall be filed within ten business days of the date of service of the motion, and replies to oppositions shall be filed within five business days of the date of service of the opposition. The date of service shall be deemed to be the third business day following service by mail or the next business day following service by overnight delivery, by hand, or by telefacsimile.

§ 251.45 Precontroversy motions, and discovery.

(a) *Precontroversy motions and objections.* In the case of a royalty fee distribution proceeding, the Librarian of Congress shall, in the notice asking the claimants whether any controversies exist concerning distribution of the royalty funds, designate a 30-day period in which any party to the proceeding may file with the Librarian of Congress objections to, or motions to dismiss, any party's royalty claim, or motions for declaratory rulings, or for procedural or evidentiary rulings, on any proper ground. In the case of a rate adjustment proceeding, the 30-day period shall correspond with the 30-day period specified in § 251.63 for settling rate differences.

(b) Any party to the proceeding wishing to file a response to such motion or objection may do so within two weeks. The Librarian, upon recommendation of the Register of Copyrights, shall rule on the motion or objection prior to the initiation of an arbitration proceeding, or may designate the motion or objection as an issue for the panel to rule on.

(c) *Discovery and motions filed with a Copyright Arbitration Royalty Panel.* (1) A Copyright Arbitration Royalty Panel shall designate a period following the filing of the written direct and rebuttal cases in which parties may request of an opposing party nonprivileged underlying documents related to the written exhibits and testimony.

(2) After the filing of the written cases, any party may file with a CARP objections to any portion of another party's written case on any proper ground including, without limitation, relevance, competency, and failure to provide underlying documents. If an objection is apparent from the face of a written case, that objection must be raised or the party may thereafter be precluded from raising such an objection.

(d) *Amended filings and discovery.* In the case of objections filed with either the Librarian of Congress or a CARP, each party may amend its claim, petition, written case, or direct evidence to respond to the objections raised by other parties, or to the requests of either the Librarian or a panel. Such amendments must be properly filed with the Librarian or the CARP, wherever appropriate, and exchanged with all parties. All parties shall be given a reasonable opportunity to conduct discovery on the amended filings.

§ 251.46 Conduct of hearings: Role of arbitrators.

(a) At the opening of a hearing conducted by a Copyright Arbitration Royalty Panel, the chairperson shall announce the subject under consideration.

(b) Only the arbitrators of a CARP, or counsel as provided in this chapter, shall question witnesses.

(c) Subject to the vote of the CARP, the chairperson shall have responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the CARP panel's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In all cases, whether there are an even or odd number of arbitrators sitting at the hearing, it takes a majority vote to grant a motion or sustain an objection. A split vote will result in the denial of the motion or the overruling of the objection;

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial; and

(5) Announcing the schedule of subsequent hearings.

(d) Each arbitrator may examine any witness or call upon any party for the production of additional evidence at any time. Further examination, cross-examination, or redirect examination by counsel relevant to the inquiry initiated by an arbitrator may be allowed by a CARP panel, but only to the limited extent that it is directly responsive to the inquiry of the arbitrator.

§ 251.47 Conduct of hearings: Witnesses and counsel.

(a) With all due regard for the convenience of the witnesses, proceedings shall be conducted as expeditiously as possible.

(b) In each distribution or rate adjustment proceeding, each party may

present its opening statement with the presentation of its direct case.

(c) All witnesses shall be required to take an oath or affirmation before testifying; however, attorneys who do not appear as witnesses shall not be required to do so.

(d) Witnesses shall first be examined by their attorney and by opposing attorneys for their competency to support their written testimony and exhibits (*voir dire*).

(e) Witnesses may then summarize, highlight or read their testimony. However, witnesses may not materially supplement or alter their written testimony except to correct it, unless the CARP panel expands the witness's testimony to complete the record.

(f) Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including an objection that an opposing party has not furnished nonprivileged underlying documents. However, they may not raise objections that were apparent from the face of a written case and could have been raised before the hearing without leave from the CARP panel. See § 251.45(c).

(g) All written testimony and exhibits will be received into the record, except any to which the panel sustains an objection; no separate motion will be required.

(h) If the panel rejects or excludes testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(i) The CARP panel shall discourage the presentation of cumulative evidence, and may limit the number of witnesses that may be heard on behalf of any one party on any one issue.

(j) Parties are entitled to conduct cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The panel, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay. Conversely, this subsection does not restrict the discretion of the panel to expand the scope of cross-examination or redirect examination.

(k) Documents that have not been exchanged in advance may be shown to a witness on cross-examination. However, copies of such documents

must be distributed to the CARP panel and to other participants or their counsel at hearing before being shown to the witness at the time of cross-examination, unless the panel directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness's direct testimony and cannot itself be relied upon in findings of fact as rebutting the witness's direct testimony. However, upon leave from the panel, the document may be admitted as evidence without a sponsoring witness if official notice is proper, or if, in the panel's view, the cross-examined witness is the proper sponsoring witness.

(1) A CARP will encourage individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination for them. However, if there is no agreement on the selection of a representative, each individual or group will be allowed to conduct its own examination and cross-examination, but only on issues affecting its particular interests, provided that the questioning is not repetitious or cumulative of the questioning of other parties within the group.

§ 251.48 Rules of evidence.

(a) *Admissibility.* In any public hearing before a Copyright Arbitration Royalty Panel, evidence that is not unduly repetitious or cumulative and is relevant and material shall be admissible. The testimony of any witness will not be considered evidence in a proceeding unless the witness has been sworn.

(b) *Documentary evidence.* Evidence that is submitted in the form of documents or detailed data and information shall be presented as exhibits. Relevant and material matter embraced in a document containing other matter not material or relevant or not intended as evidence must be plainly designated as the matter offered in evidence, and the immaterial or irrelevant parts shall be marked clearly so as to show they are not intended as evidence. In cases where a document in which material and relevant matter occurs is of such bulk that it would unnecessarily encumber the record, it may be marked for identification and the relevant and material parts, once properly authenticated, may be read into the record. If the CARP panel desires, a true copy of the material and relevant matter may be presented in extract form, and submitted as evidence. Anyone presenting documents as

evidence must present copies to all other participants at the hearing or their attorneys, and afford them an opportunity to examine the documents in their entirety and offer into evidence any other portion that may be considered material and relevant.

(c) *Documents filed with a Copyright Arbitration Royalty Panel or Copyright Office.* If the matter offered in evidence is contained in documents already on file with a Copyright Arbitration Royalty Panel or the Copyright Office, the documents themselves need not be produced, but may instead be referred to according to how they have been filed.

(d) *Public documents.* If a public document such as an official report, decision, opinion, or published scientific or economic data, is offered in evidence either in whole or in part, and if the document has been issued by an Executive Department, a legislative agency or committee, or a Federal administrative agency (Government-owned corporations included), and is proved by the party offering it to be reasonably available to the public, the document need not be produced physically, but may be offered instead by identifying the document and signaling the relevant parts.

(e) *Introduction of studies and analyses.* If studies or analyses are offered in evidence, they shall state clearly the study plan, all relevant assumptions, the techniques of data collection, and the techniques of estimation and testing. The facts and judgments upon which conclusions are based shall be stated clearly, together with any alternative courses of action considered. If requested, tabulations of input data shall be made available to the Copyright Arbitration Royalty Panel.

(f) *Statistical studies.* Statistical studies offered in evidence shall be accompanied by a summary of their assumptions, their study plans, and their procedures. Supplementary details shall be included in appendices. For each of the following types of statistical studies the following should be furnished:

(1) *Sample surveys.* (i) A clear description of the survey design, the definition of the universe under consideration, the sampling frame and units, the validity and confidence limits on major estimates; and

(ii) An explanation of the method of selecting the sample and of which characteristics were measured or counted.

(2) *Econometric investigations.* (i) A complete description of the econometric model, the reasons for each assumption, and the reasons for the statistical specification;

(ii) A clear statement of how any changes in the assumptions might affect the final result; and

(iii) Any available alternative studies that employ alternative models and variables, if requested.

(3) *Experimental analysis.* (i) A complete description of the design, the controlled conditions, and the implementation of controls; and

(ii) A complete description of the methods of observation and adjustment of observation.

(4) *Studies involving statistical methodology.* (i) The formula used for statistical estimates;

(ii) The standard error for each component;

(iii) The test statistics, the description of how the tests were conducted, related computations, computer programs, and all final results; and

(iv) Summarized descriptions of input data and, if requested, the input data themselves.

§ 251.49 Transcript and record.

(a) An official reporter for the recording and transcribing of hearings shall be designated by the Librarian of Congress. Anyone wishing to inspect or copy the transcript of a hearing may do so at a location specified by the chairperson of the Copyright Arbitration Royalty Panel conducting the hearing.

(b) The transcript of testimony and all exhibits, papers, and requests filed in the proceeding, shall constitute the official written record. Such record shall accompany the report of the determination of the CARP to the Librarian of Congress required by 17 U.S.C. 802(e).

(c) The record, including the report of the determination of a CARP, shall be available at the Copyright Office for public inspection and copying in accordance with § 251.22.

§ 251.50 Rulings and orders.

In accordance with 5 U.S.C., subchapter II, a Copyright Arbitration Royalty Panel may issue rulings or orders, either on its own motion or that of an interested party, necessary to the resolution of issues contained in the proceeding before it; Provided, That no such rules or orders shall amend, supplement or supersede the rules and regulations contained in this subchapter. See § 251.7.

§ 251.51 Closing the hearing.

To close the record of hearing, the chairperson of a Copyright Arbitration Royalty Panel shall make an announcement that the taking of testimony has concluded. In its discretion the panel may close the

record as of a future specified date, and allow time for exhibits yet to be prepared to be admitted, provided that the parties to the proceeding stipulate on the record that they waive the opportunity to cross-examine or present evidence with respect to such exhibits. The record in any hearing that has been recessed may not be closed by the chairperson before the day on which the hearing is to resume, except upon ten days' notice to all parties.

§ 251.52 Proposed findings and conclusions.

(a) Any party to the proceeding may file proposed findings of fact and conclusions, briefs, or memoranda of law, or may be directed by the chairperson to do so. Such filings, and any replies to them, shall take place at such time after the record has been closed as the chairperson directs.

(b) Failure to file when directed to do so shall be considered a waiver of the right to participate further in the proceeding, unless good cause for the failure is shown.

(c) Proposed findings of fact shall be numbered by paragraph and include all basic evidentiary facts developed on the record used to support proposed conclusions, and shall contain appropriate citations to the record for each evidentiary fact. Proposed conclusions shall be stated separately. Proposed findings submitted by someone other than an applicant in a proceeding shall be restricted to those issues specifically affecting that person.

§ 251.53 Report to the Librarian of Congress.

(a) At any time after the filing of proposed findings of fact and conclusions of law specified in § 251.52, and not later than 180 days from publication in the Federal Register of notification of commencement of the proceeding, a Copyright Arbitration Royalty Panel shall deliver to the Librarian of Congress a report incorporating its written determination. Such determination shall be accompanied by the written record, and shall set forth the facts that the panel found relevant to its determination.

(b) The determination of the panel shall be certified by the chairperson and signed by all of the arbitrators. Any dissenting opinion shall be certified and signed by the arbitrator so dissenting.

(c) At the same time as the submission to the Librarian of Congress, the chairperson of the panel shall cause a copy of the determination to be delivered to all parties participating in the proceeding.

(d) The Librarian of Congress shall make the report of the CARP and the accompanying record available for public inspection and copying.

§ 251.54 Assessment of costs of arbitration panels.

(a) After the submission of the panel's report to the Librarian of Congress, the panel may assess its ordinary and necessary costs, according to § 251.38, to the participants to the proceeding as follows:

(1) In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the panel shall direct.

(2) In the case of a royalty distribution proceeding, the parties to the proceeding shall bear the total cost of the proceeding in direct proportion to their share of the distribution.

(3) In the case of a change in the share of distribution because of the Librarian's substitution of a new determination, or a determination reached as a result of a court-ordered remand, the parties shall make restitution to each other for the difference in payments that resulted from the change.

(b) The chairperson of the panel shall cause to be delivered to each participating party a statement of the total costs of the proceeding, the party's share of the total cost, and the amount owed by the party to each arbitrator.

(c) All parties to a proceeding shall have 30 days from receipt of the statement of costs and bill for payment in which to tender payment to the arbitrators. Payment should be in the form of a money order, check, or bank draft. Failure to submit timely payment may submit the nonpaying party to the provisions of the Debt Collection Act of 1982, including disclosure to consumer credit reporting agencies and referral to collection agencies.

§ 251.55 Post-panel motions.

(a) Any party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination. Such petition shall state the reasons for modification or reversal of the panel's determination, and shall include applicable sections of the party's proposed findings of fact and conclusions of law.

(b) Replies to petitions to modify or set aside shall be filed within 14 days of the filing of such petitions.

§ 251.56 Order of the Librarian of Congress.

(a) After the filing of post-panel motions, see § 251.55, but within 60 days from receipt of the report of the determination of a panel, the Librarian of Congress shall issue an order accepting the panel's determination or substituting the Librarian's own determination. The Librarian shall adopt the determination of the panel unless he or she finds that the determination is arbitrary or contrary to the applicable provisions of 17 U.S.C.

(b) If the Librarian substitutes his or her own determination, the order shall set forth the reasons for not accepting the panel's determination, and shall set forth the facts which the Librarian found relevant to his or her determination.

(c) The Librarian shall cause a copy of the order to be delivered to all parties participating in the proceeding. The Librarian shall also publish the order, and the determination of the panel, in the *Federal Register*.

§ 251.57 Effective date of order.

An order of determination issued by the Librarian under § 251.56 shall become effective 30 days following its publication in the *Federal Register*, unless an appeal has been filed pursuant to § 251.58 and notice of the appeal has been served on all parties to the proceeding.

§ 251.58 Judicial review.

(a) Any order of determination issued by the Librarian of Congress under § 251.55 may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after publication of the order in the *Federal Register*.

(b) If no appeal is brought within the 30 day period, the order of determination of the Librarian is final, and shall take effect as set forth in the order.

(c) The pendency of any appeal shall not relieve persons obligated to make royalty payments under 17 U.S.C. 111, 115, 116, 118, 119, or 1003, and who would be affected by the determination on appeal, from depositing statements of account and royalty fees specified by those sections.

Subpart F—Rate Adjustment Proceedings**§ 251.60 Scope.**

This subpart governs only those proceedings dealing with royalty rate adjustments affecting cable (17 U.S.C. 111), the production of phonorecords

(17 U.S.C. 115), performances on coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), and noncommercial educational broadcasting (17 U.S.C. 118). Those provisions of subpart E of this part generally regulating the conduct of proceedings shall apply to rate adjustment proceedings, unless they are inconsistent with the specific provisions of this subpart.

§ 251.61 Commencement of adjustment proceedings.

(a) In the case of cable, phonorecords, and coin-operated phonorecord players (jukeboxes), rate adjustment proceedings shall commence with the filing of a petition by an interested party according to the following schedule:

- (1) Cable: During 1995, and each subsequent fifth calendar year.
- (2) Phonorecords: During 1997 and each subsequent tenth calendar year.
- (3) Coin-operated phonorecord players (jukeboxes): Within one year of the expiration or termination of a negotiated license authorized by 17 U.S.C. 116.

(b) Cable rate adjustment proceedings may also be commenced by the filing of a petition, according to 17 U.S.C. 801(b)(2)(B) and (C), if the Federal Communications Commission amends certain of its rules with respect to the carriage by cable systems of broadcast signals, or with respect to syndicated and sports programming exclusivity.

(c) In the case of noncommercial educational broadcasting, a petition is not necessary for the commencement of proceedings. Proceedings commence with the publication of a notice of the initiation of arbitration proceedings in the *Federal Register* on June 30, 1997, and at five year intervals thereafter.

§ 251.62 Content of petition.

(a) In the case of a petition for rate adjustment proceedings for cable television, phonorecords, and coin-operated phonorecord players (jukeboxes), the petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the matter. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users; owners or users with similar interests may file a petition jointly.

(b) In the case of a petition for rate adjustment proceedings as the result of a Federal Communications Commission rule change, the petition shall also set forth the actions of the Federal Communications Commission on which

the petition for a rate adjustment is based.

§ 251.63 Period for consideration.

To allow time for parties to settle their differences regarding rate adjustments, the Librarian of Congress shall, after the filing of a petition, or prior to the commencement of proceedings made under 17 U.S.C. 118(b), designate a 30-day period for consideration of their settlement. The Librarian shall cause notice of the consideration period to be published in the *Federal Register*, and such notice shall include the effective dates of that period.

§ 251.64 Disposition of petition; initiation of arbitration proceeding.

At the end of the 30-day period for settling rate differences, and after the Librarian has ruled on all motions filed during that period under § 251.45(b), the Librarian will determine the sufficiency of the petition, including, where appropriate, whether one or more of the petitioners' interests are "significant." If the Librarian determines that a petition is significant, he or she will cause to be published in the *Federal Register* a declaration of a controversy accompanied by a notice of initiation of an arbitration proceeding. The same declaration and notice of initiation shall be made for noncommercial educational broadcasting in accordance with 17 U.S.C. 118. Such notice shall, to the extent feasible, describe the nature, general structure, and schedule of the proceeding.

§ 251.65 Deduction of costs of rate adjustment proceedings.

The Librarian of Congress and the Register of Copyrights may deduct the reasonable costs the Library of Congress and the Copyright Office incurred as a result of a rate adjustment proceeding from the relevant royalty pool. If no royalty pool exists, the Librarian of Congress and the Register of Copyrights may assess their reasonable costs directly to the parties participating in the most recent relevant proceedings.

Subpart G—Royalty Fee Distribution Proceedings**§ 251.70 Scope.**

This subpart governs only those proceedings dealing with distribution of royalty payments deposited with the Register of Copyrights for cable (17 U.S.C. 111), satellite carrier (17 U.S.C. 119), and digital audio recording devices and media (17 U.S.C. chapter 10). Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they

are inconsistent with the specific provisions of this subpart.

§ 251.71 Commencement of proceedings.

(a) *Cable*. In the case of royalty fees collected under the cable compulsory license (17 U.S.C. 111), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(b) *Satellite carriers*. In the case of royalty fees collected under the satellite carrier compulsory license (17 U.S.C. 119), any person claiming to be entitled to such fees must file a claim with the Copyright Office during the month of July each year in accordance with the requirements of this subchapter.

(c) *Digital audio recording devices and media*. In the case of royalty payments for the importation and distribution in the United States, or the manufacture and distribution in the United States, of any digital recording device or medium, any person claiming to be entitled to such payments must file a claim with the Copyright Office during the month of January or February each year in accordance with the requirements of this subchapter.

§ 251.72 Determination of controversy.

(a) *Cable*. After the first day of August each year, the Librarian of Congress shall determine whether a controversy exists among the claimants of cable compulsory license royalty fees. In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the *Federal Register*, along with a description of the general structure and schedule of the proceeding.

(b) *Satellite carriers*. After the first day of August of each year, the Librarian shall determine whether a controversy exists among the claimants of the satellite carrier compulsory license royalty fees. In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the *Federal Register*, along with a description of the general structure and schedule of the proceeding.

(c) *Digital audio recording devices and media*. Within 30 days after the last day of February each year, the Librarian of Congress shall determine whether a controversy exists among the claimants of digital audio recording devices and media royalty payments as to any Subfund of the Sound Recording Fund or the Musical Works Fund as set forth in 17 U.S.C. 1006(b) (1) and (2). In order to determine whether a controversy exists, and to facilitate agreement among the claimants as to the proper distribution, the Librarian may request public comment or conduct public hearings, whichever he or she deems necessary. All requests for information and notices of public hearings shall be published in the *Federal Register*, along with a description of the general structure and schedule of the proceeding.

§ 251.73 Declaration of controversy: Initiation of arbitration proceeding.

If the Librarian determines that a controversy exists among the claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the *Federal Register* a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

§ 251.74 Deduction of costs of distribution proceedings.

The Librarian of Congress and the Register of Copyrights may, before any distributions of royalty fees are made, deduct the reasonable costs incurred by the Library of Congress and the Copyright Office as a result of the distribution proceeding, from the relevant royalty pool.

3. Part 302 of chapter III is removed.

3a. A new part 252 is added to subchapter B of chapter II to read as follows:

PART 252—FILING OF CLAIMS TO CABLE ROYALTY FEES

Sec.	Scope.
252.1	Scope.
252.2	Time of filing.
252.3	Content of claims.
252.4	Compliance with statutory dates.
252.5	Copies of claims.

Authority: 17 U.S.C. 111(d)(4), 801, 803.

§ 252.1 Scope.

This part prescribes procedures under to 17 U.S.C. 111(d)(4)(A), whereby parties claiming to be entitled to cable compulsory license royalty fees shall file claims with the Copyright Office.

§ 252.2 Time of filing.

During the month of July each year, any party claiming to be entitled to cable compulsory license royalty fees for secondary transmissions of one or more of its works during the preceding calendar year shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to a party for secondary transmissions during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

§ 252.3 Content of claims.

(a) Claims filed by parties claiming to be entitled to cable compulsory license royalty fees shall include the following information:

(1) The full legal name of the person or entity claiming royalty fees.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim. For this purpose a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliate agreements.

(4) For both individual claims and joint claims, other than a joint claim filed by a performing rights society on behalf of its members or affiliates, a general statement of the nature of each claimant's copyrighted works and identification of at least one secondary transmission by a cable system of each claimant's copyrighted works establishing a basis for the claim.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

(d) In the event that, after filing an individual claim, a claimant chooses to negotiate a joint claim, either the particular joint claimant or the individual claimant shall notify the Copyright Office of such change within 14 days from the making of the agreement.

§ 252.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if:

(1) They are received in the offices of the Copyright Office during normal business hours during the month of July, or

(2) They are properly addressed to the Copyright Office in accordance with § 251.1, and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after July 31, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted as proof in lieu of the receipt.

§ 252.5 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to cable royalty fees.

PART 303—[REMOVED]

4. Part 303—Access to Phonorecord Players (Jukeboxes) of chapter III is removed.

PART 304—[REDESIGNATED AS PART 253]

5. Part 304 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 253.

6. The heading for part 253 is revised to read as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

7. The authority citation to part 253 is revised to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

§ 253.4 [Amended]

8. Section 253.4 is amended in the introductory text of the section by removing "§§ 304.5 and 304.6" and adding "§§ 253.5 and 253.6".

§ 253.8 [Amended]

9. Section 253.8(e) is amended by removing "CRT" each place it appears and adding "Copyright Office".

§ 253.9 [Amended]

10. Section 253.9 is amended by removing "CRT" and adding "Copyright Office".

§ 253.10 [Amended]

11. Section 253.10 is amended by removing "CRT" each place it appears and adding "Copyright Office".

§ 253.10b [Amended]

11a. Section 253.10(b) is amended by removing "§ 304.5" and adding "§ 253.5".

§ 253.10c [Amended]

11b. Section 253.10(c) is amended by removing "§ 304.5" and adding "§ 253.5".

§ 253.12 [Amended]

12. Section 253.12 "Amendment of certain regulations" and 253.13 "Issuance of interpretative regulations" are removed.

PART 305—[REMOVED]

13. Part 305 Claims to Phonorecord Player (Jukebox) Royalty Fees of chapter III is removed.

PART 306—[REDESIGNATED AS PART 254]

14. Part 306 is transferred to chapter II, subchapter B and is redesignated as part 254.

15. The heading for part 254 is revised to read as follows:

PART 254—ADJUSTMENT OF ROYALTY RATE FOR COIN-OPERATED PHONORECORD PLAYERS

16. The authority citation for part 254 is revised to read as follows:

Authority: 17 U.S.C. 116, 801(b)(1).

§ 254.1 [Amended]

17. Section 254.1 is amended by removing "306" and adding "254" and by removing "and 804(a)".

PART 307—[REDESIGNATED AS PART 255]

18. Part 307 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 255.

19. The heading for part 255 is revised to read as follows:

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

20. The authority citation for part 255 is revised to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803.

§ 255.1 [Amended]

21. Section 255.1 is amended by removing "307" and adding "255".

§ 255.2 [Amended]

22. Section 255.2 is amended by removing "§ 307.3" and adding "§ 255.3".

§ 255.3 [Amended]

23. Section 255.3 is amended in paragraph (g)(1) by removing "Copyright Royalty Tribunal" and in (g)(1) and (g)(2) by removing "CRT" each place it appears and adding "Librarian of Congress" in each place, respectively.

PART 308—[REDESIGNATED AS PART 256]

24. Part 308 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 256.

25. The heading for part 256 is revised to read as follows:

PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE**PART 309—[REDESIGNATED AS PART 257]**

26. Part 309 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 257.

27. Part 257 is revised to read as follows:

PART 257—FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES**Sec.**

257.1 General.

257.2 Time of filing.

257.3 Content of claims.

257.4 Compliance with statutory dates.

257.5 Copies of claims.

257.6 Separate claims required.

Authority: 17 U.S.C. 119(b)(4).

§ 257.1 General.

This part prescribes the procedures under 17 U.S.C. 119(b)(4) whereby

parties claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers of television broadcast signals to the public for private home viewing shall file claims with the Copyright Office.

§ 257.2 Time of filing.

During the month of July each year, any party claiming to be entitled to compulsory license royalty fees for secondary transmissions by satellite carriers during the previous calendar year of television broadcast signals to the public for private home viewing shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to any party during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

§ 257.3 Content of claims.

(a) Claims filed by parties claiming to be entitled to satellite carrier compulsory license royalty fees shall include the following information:

(1) The full legal name of the person or entity claiming royalty fees.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements.

(4) For both individual claims and joint claims, other than a joint claim filed by a performing rights society on behalf of its members or affiliates, a general statement of the nature of each claimant's copyrighted works and identification of at least one secondary transmission by a satellite carrier of each claimant's copyrighted works establishing a basis for the claim.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or full address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

(d) In the event that, after filing an individual claim, an interested copyright party chooses to negotiate a joint claim, either the particular joint claimants or individual claimant shall notify the Copyright Office of such change within 14 days from the making of the agreement.

§ 257.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if: (1) They are received in the offices of the Copyright Office during normal business hours during the month of July, or

(2) They are properly addressed to the Copyright Office in accordance with § 251.1, and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after July 31, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted as proof in lieu of the receipt.

§ 257.5 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to satellite carrier royalty fees.

§ 257.6 Separate claims required.

If a party intends to file claims for both cable compulsory license and satellite carrier compulsory license royalty fees during the same month of July, that party must file separate claims with the Copyright Office. Any single claim which purports to file for both cable and satellite carrier royalty fees will be dismissed.

PART 310—[REDESIGNATED AS PART 258]

28. Part 310 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 258.

29. The heading for part 258 is revised to read as follows:

PART 258—ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

29a. The authority citation for part 258 continues to read as follows:

Authority: 17 U.S.C. 119(c)(3)(F).

§ 258.1 [Amended]

30. Section 258.1 is amended by removing "310" and adding "258".

§ 258.2 [Amended]

31. Section 258.2 is amended by removing "§ 310(3)(b)" and adding "§ 258(3)(b)".

PART 311—REDESIGNATED AS PART 259]

32. Part 311 of chapter III is transferred to subchapter B of chapter II and is redesignated as part 259.

33. The heading for part 259 is revised to read as follows:

PART 259—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

33a. The authority citation for part 259 is amended to read as follows:

Authority: 17 U.S.C. 1007(a)(1).

§ 259.1 [Amended]

34. Section 259.1 is amended by removing "Copyright Royalty Tribunal" and adding "Copyright Office".

§ 259.2 [Amended]

35. Section 259.2 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

§ 259.3 [Amended]

36. Section 259.3 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

36a. Section 259.3 is amended by revising paragraph (c) to read as follows:

§ 259.3 Content of claims.

* * * * *

(c) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant

are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

* * * * *

§ 259.4 [Amended]

37. Section 259.4 is amended by removing "Copyright Royalty Tribunal" each place it appears and adding "Copyright Office".

37a. A new paragraph (e) is added to § 259.4 to read as follows:

§ 259.4 Content of notices regarding independent administrators.

* * * * *

(e) No notice may be filed by facsimile transmission.

§ 259.5 [Amended]

38. Section 259.5 is revised to read as follows:

§ 259.5 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if: (1) They are received in the offices of the Copyright Office during

normal business hours during the months of January or February, or

(2) They are properly addressed to the Copyright Office in accordance with § 251.1, and they are deposited with sufficient postage with the United States Postal Service and bear a January or February U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which the last day of February falls on Saturday, Sunday, a holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in March, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in March, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after the last day of February, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not received by the Copyright Office, a

claimant may nonetheless prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt. No affidavit of an officer or employee of the claimant, or of a postal worker will be accepted as proof in lieu of the receipt.

39. Section 259.6 is revised to read as follows:

§ 259.6 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to digital audio recording devices and media royalty payments.

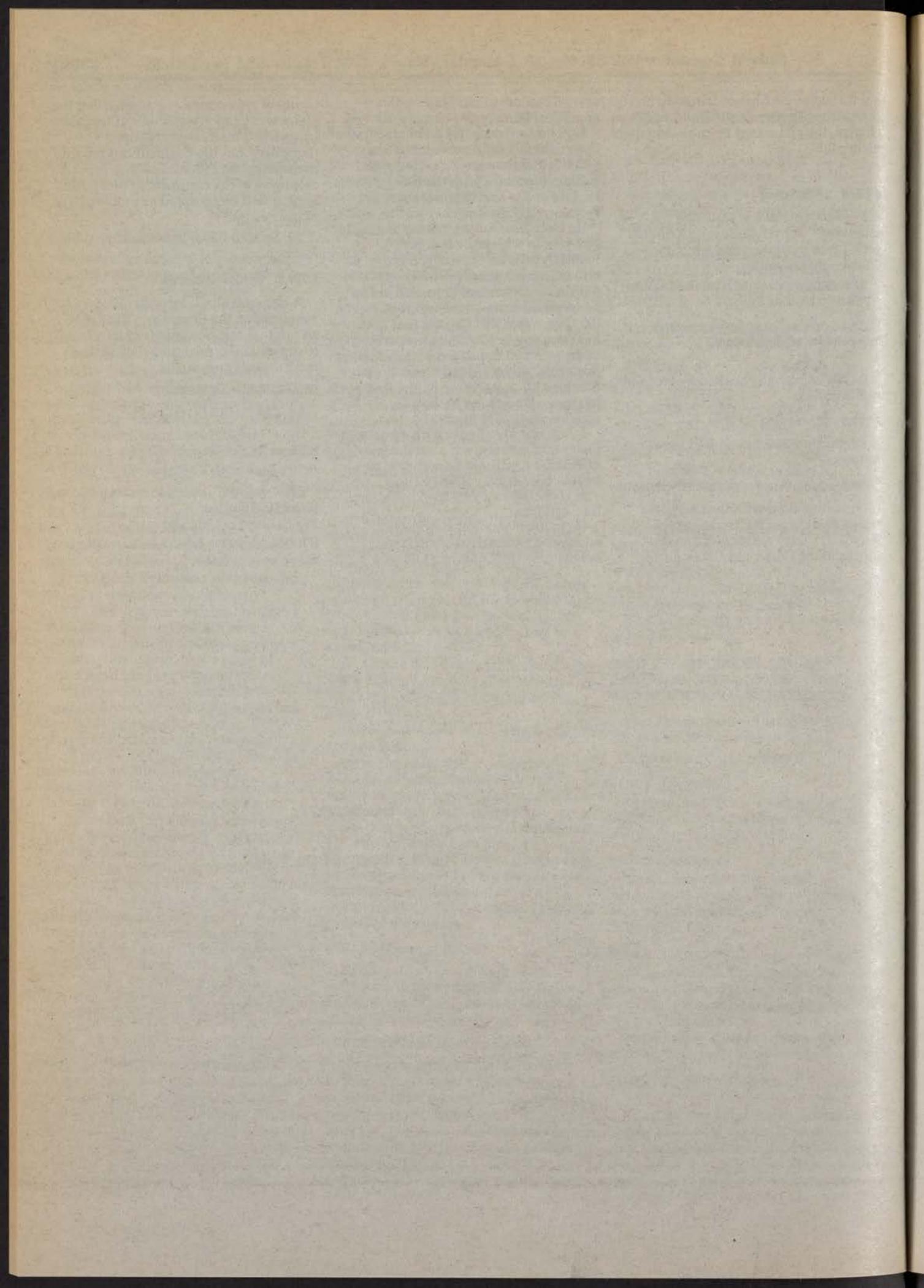
CHAPTER III—[REMOVED]

41. Chapter III is removed.

Dated: May 3, 1994.

Barbara Ringer,
Acting Register of Copyrights.

Approved by:
James H. Billington,
The Librarian of Congress.
[FR Doc. 94-10985 Filed 5-6-94; 8:45 am]
BILLING CODE 1410-09-P



Federal Register

Monday
May 9, 1994

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 527

Transfer of Inmates After Conviction;
Rescission; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 527

[BOP-1023-F]

Transfer of Inmates After Conviction;
Rescission

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is rescinding its regulations on Transfer of Inmates after Conviction because the provisions contained in these regulations are sufficiently expressed in pertinent Federal Rules and consequently do not need to be restated as regulations.

EFFECTIVE DATE: May 9, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is rescinding its regulations on Transfer of Inmates after Conviction (28 CFR 527.20). A final rule on this subject was published in the *Federal Register* April 4, 1980 (45 FR 23365).

In accordance with E.O. 12866, the Bureau of Prisons is reviewing its regulations for the purpose of ensuring that it promulgates only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need. The Bureau has determined that provisions for transfer of inmates after conviction pertinent to Rule 38 of the Federal Rules of Criminal Procedure (more specifically, paragraph (b) with respect to inmates convicted of offenses committed on or after November 1,

1987, and paragraph (a)(2) for inmates convicted of offenses committed prior to November 1, 1987) are sufficiently expressed in the pertinent statute and that consequently there is no need to restate these provisions in Bureau regulations.

Section 527.20 had stated that the Bureau of Prisons adhered to Rule 38(a)(2) of the Federal Rules of Criminal Procedure. This Rule provides, in part, that if a sentence of imprisonment is not stayed, the court may recommend to the Attorney General that the defendant be retained at, or transferred to, a place of confinement near the place of trial or the place where the appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of his appeal to the court of appeals. Section 527.20 further stated that the Bureau shall make every effort to place the inmate in such a facility, unless a reason exists for not placing the inmate in that facility, in which case the matter is called to the attention of the court and an attempt is made to arrive at an acceptable place of confinement.

The Bureau has explicit statutory authority and delegated authority to designate the place of a prisoner's confinement (see 18 U.S.C. 3621, 4082 (applicable to offenses committed prior to November 1, 1987), and 28 CFR 0.96(c)). Internal agency procedures provide sufficient guidance in consideration of court recommendations for the place of confinement made under either Rule 38(a)(2) or (b).

Because this rescission imposes no new restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will

receive no response in the *Federal Register*.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 527

Prisoners.
Kathleen M. Hawk,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 527 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION,
CLASSIFICATION, AND TRANSFER

PART 527—TRANSFERS

1. The authority citation for 28 CFR part 527 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3569, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4100-4115, 4161-4166 (Repealed as to offenses committed on or after November 1, 1987), 4201-4218, 5003, 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart C—[Removed and Reserved]

2. Subpart C, consisting of § 527.20, is removed and reserved.

[FR Doc. 94-11101 Filed 5-6-94; 8:45 am]

BILLING CODE 4410-05-P

Monday
May 9, 1994

Federal Register

Part V

**Department of
Education**

34 CFR Part 388

State Vocational Rehabilitation Unit In-
Service Training; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 388

RIN 1820-AB24

State Vocational Rehabilitation Unit In-Service Training

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the State Vocational Rehabilitation Unit In-Service Training program. The regulations are needed to implement changes made by the Rehabilitation Act Amendments of 1992. The proposed regulations incorporate new statutory requirements, reference changes in Education Department General Administrative Regulations, incorporate new phraseology from the Act, limit eligibility to designated State agencies, and provide funding allocation information.

DATES: Comments must be received on or before June 8, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to the Acting Commissioner, U.S. Department of Education, 400 Maryland Avenue SW., room 3038 Switzer Building, Washington, DC 20202-2531.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT:

Richard Melia, U.S. Department of Education, 400 Maryland Avenue SW., room 3422 Switzer Building, Washington, DC 20202-2649. Telephone (202) 205-9400. 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: These proposed regulations would implement the changes to the State Vocational Rehabilitation Unit In-Service Training program made to the Rehabilitation Act of 1973 (the Act) by the Rehabilitation Act Amendments of 1992 (the Amendments), Public Law 102-569, enacted October 29, 1992.

The Amendments require that at least 15 percent of the sums appropriated to carry out section 302 of the Act be allocated among designated State agencies to be used, directly or indirectly, for projects for in-service

training of rehabilitation personnel. The Secretary proposes to award funds to State agencies with approved projects based on the number of full-time equivalent staff employed by State rehabilitation agencies to ensure that all agencies have access to support for in-service training. The Department proposes to distribute 80 percent of the funds available to approved projects by formula based on the number of staff in designated State units and provide minimum shares to those small designated units. The remaining funds will be allocated on the basis of quality of the application and the extent to which an application addresses one or more specific priorities established by these regulations in § 388.22 and announced in the application notice.

The current regulations do not address allocation of funds by formula or on the basis of quality of the application. The Secretary has determined that the language on allocation requires that a formula be created by regulations. The Secretary reviewed a number of options for the allocation of funds and determined that the fairest approach would distribute funds based on the number of full-time equivalent staff since the purpose of in-service training is the training of that staff. Moreover, the Secretary reserved a minimum share for small agencies, as is done in other rehabilitation formula programs, to ensure that small agencies that lack training resources have sufficient funds to provide training for their staff. The requirement to distribute no less than eighty percent of the funds by formula was based on the Secretary's assessment that the funds remaining after formula allocation at that level would be an incentive for States to prepare high-quality proposals addressing the Secretary's priorities.

The Department will continue to use the information reported annually by designated State units to the Rehabilitation Services Administration on Form RSA-2, (Annual Vocational Rehabilitation Program/Cost Report), in determining allocations of funds based on the number of person years for each designated State unit.

The State Vocational Rehabilitation Unit In-Service Training program is one of six important programs in the Rehabilitation Training program. The Department envisions these six programs as an integrated response to the purpose for the rehabilitation training programs in section 301 of the Act. The six programs are: Rehabilitation Long-Term Training, Experimental and Innovative Training, State Vocational Rehabilitation Unit In-Service Training, Rehabilitation

Continuing Education Programs, Rehabilitation Short-Term Training, and Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind. These programs, as a whole, are designed to meet the need to prepare qualified rehabilitation professionals to provide effective rehabilitation services across the service continuum of programs under the Rehabilitation Act to individuals with disabilities.

In addition to these proposed regulations for in-service training, notices of proposed rulemaking (NPRMs) have been published for 34 CFR Part 386, Rehabilitation Training; Rehabilitation Long-Term Training (58 FR 52606), and for 34 CFR Part 396, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind (59 FR 8350). Technical amendments to existing regulations for the remaining three training programs (34 CFR Part 387, Experimental and Innovative Training, 34 CFR Part 389, Rehabilitation Continuing Education Programs, and 34 CFR Part 390, Rehabilitation Short-Term Training) and general provisions for Rehabilitation Training (34 CFR Part 385) were published on February 18, 1994 (58 FR 8330).

Designated State rehabilitation agencies, in developing their in-service training programs, are expected to interact with and use the resources of activities supported under the other rehabilitation training programs. Likewise, the purpose of activities supported under the other rehabilitation training programs is to support the work of designated State rehabilitation agencies.

Funding for approved applications will be allocated by a combination of award considerations: (1) A formula component that reflects the number of staff employed by an agency. (2) A qualitative component that awards funds based upon the overall ranking of the application in the review process. The Secretary reserves funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the selection criteria in § 388.20 and address one or more priority areas identified in § 388.22. The formula component ensures that all agencies with an approved project will receive a proportional share of the majority of available funds. The Secretary believes that a minimum score is necessary to ensure that all funded applications are of a high quality. The Secretary does not anticipate setting a standard that any State unit will not be able to meet. Nevertheless, if a State unit falls below the standard, the Secretary's first recourse would be to

work with the applicant under the provisions of section 80.12 of the Education Department General Administrative Regulations to determine special conditions or restrictions in the award that correspond to the high risk conditions identified in the review. Only if negotiations fail to resolve those problems would an award not be made and the funds reallocated.

The Secretary expects that the quality component's minimum score will ensure that only agencies with high quality proposals will receive awards for the remaining amount not distributed by formula. The application notice will identify which priorities are to be used for the competition, and applicants must address the priority in their proposal to be eligible to receive additional funding. The application notice will publish a table presenting the formula allocation by State unit.

In-service grants were awarded for one year to designated State agencies in fiscal year (FY) 1993 through a competitive process conducted under the existing regulations and a statement of policy. The FY 1993 process awarded funds using a formula component and a qualitative component similar to what is proposed in these regulations. Based upon the experience in FY 1993 and consultation with the leadership of designated State rehabilitation agencies, the proposed regulations would change the basis on which qualitative funds are allocated. Instead of awarding qualitative funds based on rank order only, the Secretary would reserve funds over and above the formula for proposals that receive a rating of 80 points or more and address one or more priority areas established by the regulations and announced in the application notice. The Secretary believes that model, high-quality in-service training projects addressing the priority areas in § 388.22 will benefit many States beyond the recipient program through replication and dissemination of training approaches.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 388.20 What selection criteria does the Secretary use?) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 400 Maryland Avenue SW. (room 5125, FOB-6), Washington, DC 20202-2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Section 388.20 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

State agencies that participate in the State Rehabilitation Unit In-Service Training program would have to comply with the information collection requirements in these proposed regulations. The Department needs and uses the information to make grants and to report on the training provided to recipients. Annual public reporting and recordkeeping burden for this collection of information is estimated to average 80 hours per response for 81 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The aggregate burden is estimated to be 6480 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

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 strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3214, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

List of Subjects in 34 CFR Part 388

Grant programs—education, In-service training, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.265, State Vocational Rehabilitation Unit In-Service Training)

Dated: March 25, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 388 to read as follows:

PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

Subpart A—General

Sec.

388.1 What is the State Vocational Rehabilitation Unit In-Service Training program?

388.2 Who is eligible for an award?

388.3 What types of projects are authorized?

388.4 What activities may the Secretary fund?

388.5 What regulations apply?

388.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

388.20 What selection criteria does the Secretary use?

388.21 How does the Secretary determine the amount of a basic State award?

388.22 What priorities does the Secretary consider in making an award?

Subpart D—What Conditions Must be Met After an Award?

388.30 What are the matching requirements?

388.31 What are the allowable costs?

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

Subpart A—General

§ 388.1 What is the State Vocational Rehabilitation Unit In-Service Training program?

This program is designed to support projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of

vocational rehabilitation services or in skill areas that will enable staff personnel to improve their ability to provide vocational rehabilitation services leading to employment outcomes for individuals with disabilities. The State Vocational Rehabilitation Unit In-Service Training program responds to needs identified in the comprehensive system of personnel development in section 101(a)(7) of the Act. The program may include training designed—

(a) To address recruitment and retention of qualified rehabilitation professionals;

(b) To provide for succession planning;

(c) To provide for leadership development and capacity building; and

(d) For fiscal year 1994, to provide training on the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(Authority: 29 U.S.C. 771a(g)(3))

§ 388.2 Who is eligible for an award?

Each designated State agency is eligible to receive an award under the basic State award program described in § 388.21. If a designated State agency does not apply for an award during an announced competition, no funds may be made available for inservice training of the staff of that designated State agency under this program until there is a new competition for funding. At least 15 percent of the sums appropriated to carry out section 302 of the Act must be allocated to designated State agencies to be used, directly or indirectly, for projects for in-service training of rehabilitation personnel.

(Authority: 29 U.S.C. 771a(g)(3))

§ 388.3 What types of projects are authorized?

State vocational rehabilitation unit in-service training projects are concerned with the staff development and training of State vocational rehabilitation unit personnel in order to ensure an improved level of competence in serving State unit clients and to assist in expanding and improving vocational rehabilitation services for individuals with disabilities, especially those with severe disabilities, to ensure employment outcomes.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.4 What activities may the Secretary fund?

(a) Training activities supported under a State vocational rehabilitation unit in-service training grant focus primarily on program areas that are essential to the State unit's operation or

on skill areas that will enable staff personnel to improve their ability to function on their job, or prepare for positions of greater responsibility within the unit, or to correct deficiencies identified in the State program. Projects may—

(1) Address recruitment and retention of qualified rehabilitation professionals;

(2) Provide for succession planning;

(3) Provide for leadership development and capacity building; and

(4) For fiscal year 1994, provide training on the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(b) Training methods may include—

(1) The development of State unit training institutes related to the specific aspects of State unit administration or service provision;

(2) Group employee training at courses conducted in cooperation with or by an educational institution;

(3) Individualized directed study in priority areas of State unit service or practice;

(4) Employee access to current agency instructional resources for books, films, videos, tapes, and other human resource development resources;

(5) Distance learning through telecommunications; and

(6) Dissemination and information sharing with other designated State agencies.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.5 What regulations apply?

The following regulations apply to the State Vocational Rehabilitation Unit In-Service Training program:

(a) The regulations in this part 388.

(b) The regulations in 34 CFR Part 385.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.6 What definitions apply?

The definitions in 34 CFR Part 385 apply to this program.

(Authority: 29 U.S.C. 711(c) and 771(a)(g)(3))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 388.20 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) Evidence of need. (20 points)

(1) The Secretary reviews each application for information that shows that the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) The need for the in-service training project has been adequately justified and relates to the mission of the State-Federal rehabilitation service program and can be expected to improve the competence of all State vocational rehabilitation personnel in providing vocational rehabilitation services to individuals with disabilities that will result in employment outcomes or otherwise contribute to more effective management of the State unit program;

(ii) The State unit in-service training plan responds to needs identified in the training needs assessment and the proposed training relates to the unit's State plan, particularly the requirements in section 101(a)(7) of the Act for each designated State unit to develop a comprehensive system of personnel development; and

(iii) The State has conducted an annual needs assessment of the in-service training needs for all of the State unit employees.

(b) *Nature and scope of training program.* (20 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary looks for information that shows—

(i) The objectives to be achieved by the project will address the needs as determined by the assessment;

(ii) The scope and nature of the training activities will accomplish the project objectives;

(iii) The training conducted can be measured and evaluated as to how it accomplished the project objectives; and

(iv) The program primarily includes an integrated sequence of—

(A) Workshops, seminars, distance education, and other special courses for new counselors and other classes of State unit personnel concerned with State unit procedures and policies;

(B) Concentrated training activities focusing on improving State unit staff skills in working with specific groups of individuals with disabilities; and

(C) Directed individualized or group staff development activities designed to enable selected staff to acquire special skills.

(c) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of how the project will achieve each objective;

(ii) The way the applicant plans to use its resources and personnel to achieve each objective;

(iii) An effective plan of management that ensures proper and efficient administration of the project;

(iv) A clear description of how the applicant will provide equal access and treatment for State agency personnel who are members of groups that have been traditionally underrepresented, such as individuals with disabilities, the elderly, women, and members of racial or ethnic minority groups; and

(v) For FY 1994, a clear description of how the applicant will provide training regarding the 1992 amendments to the Rehabilitation Act of 1973.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of key personnel proposed for the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel, including consultants, to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as individuals with disabilities, the elderly, women, and members of minority groups.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project; and

(iii) The budget clearly identifies activities to be conducted under § 388.21(a), as well as activities conducted under § 388.21(b), if applicable.

(f) *Evaluation.* (15 points)

(1) The Secretary reviews each application to determine the usefulness of the proposed project training in improving services to individuals with disabilities to ensure employment outcomes, including—

(i) The extent to which training outcomes are objective; and

(ii) The extent to which the training will result in improved individual

competency recognized through licensure, certification, or award of academic degrees or certificates.

(2) The Secretary looks for qualitative and quantitative measures that show training methods and materials are appropriate for the project and, to the extent possible, will be useful in determining how in-service training improves the impact and effectiveness of services to individuals with disabilities assisted under the Rehabilitation Act to ensure employment outcomes.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 388.21 How does the Secretary determine the amount of a basic State award?

(a) The Secretary distributes no more than 80 percent of the funds available for these awards as follows:

(1) For each competition the Secretary will determine a minimum score based upon the selection criteria in § 388.20 that an applicant must receive in order for its application to be approved by the Secretary.

(2) Each designated State agency that submits an approved application receives an amount based upon a formula that provides each approved project an amount equal to the percentage that the designated State agency's staff, as reported by total person years to the Secretary on Form RSA-2, represents of all staff of all designated State agencies, as reported to the Secretary on Form RSA-2 for the most recent reporting period. A copy of Form RSA-2 may be obtained from the Department of Education, 400 Maryland Avenue, SW., 3211 Switzer Building, Washington, DC 22204-2735.

(3) No designated State agency with an approved project receives less than one-third of one percent of the sums made available for the fiscal year.

(4) Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect) are each allotted not less than one-eighth of one percent of the amounts made available for each fiscal year for submission of an application that is approved for funding.

(b) After determining a designated State agency's award under paragraph (a) of this section, the Secretary reserves the remaining funds to be allocated based on the quality of the application as determined by competitive reviews conducted by the Department using the criteria in § 388.20 and the priorities in § 388.22.

(c) Prior to award, negotiations may be conducted with applicants to resolve

any problems or weaknesses in the application identified by the review process.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 388.22 What priorities does the Secretary consider in making an award?

(a) The Secretary reserves funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the criteria described in § 388.20.

(b) In making a final selection of proposals to support under this program, the Secretary considers the extent to which proposals have exceeded a rating of 80 points and address one or more of the following priorities announced in the application notice:

(1) *Development and dissemination of model in-service training materials and practices.* The proposed project demonstrates an effective plan to develop and disseminate information on its State Vocational Rehabilitation In-Service Training program, including the identification of training approaches and successful practices, in order to permit the replication of these programs by other State vocational rehabilitation units.

(2) *Distance education.* The proposed project demonstrates innovative strategies for training State vocational rehabilitation unit personnel at their job sites through distance education methods, such as interactive audio, video, computer technologies, or existing telecommunications networks.

(3) *Enhanced employment outcomes for specific populations.* The proposed project supports specialized training in the provision of vocational rehabilitation or related services to individuals with disabilities to increase the rehabilitation rate into competitive employment for all individuals or specified target groups.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

Subpart D—What Conditions Must be Met After an Award?

§ 388.30 What are the matching requirements?

(a) The Secretary may make grants for paying part of the costs of projects under this program. Except as provided for in paragraphs (b) and (c) of this section, the grantee shall provide at least 10 percent of the total costs of the project.

(b) Grantees designated in § 388.21(a)(3) to receive a minimum

share of one third of one percent of the sums made available for the fiscal year shall provide at least four percent of the total costs of the project.

(c) Grantees designated in § 388.21(a)(4) to receive not less than one-eighth of one percent of the amounts made available for each fiscal year shall provide at least two percent of the total costs of the project unless exempted by other applicable Federal laws or regulations.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 388.31 What are the allowable costs?

In addition to those allowable costs established in 34 CFR 75.530 through 75.562 (Education Department General Administrative Regulations), the following items are allowable under State vocational rehabilitation unit in-service training projects:

- (a) Trainee per diem costs.
- (b) Trainee travel in connection with a training course.
- (c) Trainee tuition and fees.
- (d) Telecommunications and technology fees in connection with a distance learning training course.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

[FR Doc. 94-11009 Filed 5-6-94; 8:45 am]

BILLING CODE 4000-01-P

federal register

**Monday
May 9, 1994**

Part VI

**Office of
Management and
Budget**

Budget Rescissions and Deferrals; Notice

**OFFICE OF MANAGEMENT AND
BUDGET****Budget Rescissions and Deferrals**

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral of budget authority, totaling \$7.3 million.

The deferral affects the Department of Health and Human Services. The details of the revised deferral is contained in the attached report.

William J. Clinton.

The White House,

May 2, 1994.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

<u>DEFERRAL NO.</u>	<u>ITEM</u>	<u>BUDGET AUTHORITY</u>
	Department of Health and Human Services:	
	Social Security Administration:	
D94-7A	Limitation on administrative expenses.....	7,319
		<hr/>
	Total, deferrals.....	7,319

Deferral No. D94-7A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D94-7, which was transmitted to Congress on October 13, 1993.

This revision increases by \$2,214 the previous deferral of \$7,316,594 in the Department of Health and Human Services, resulting in a total deferral of \$7,318,808. The increase reflects recoveries of prior-year obligations.

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral of budget authority, totaling \$7.3 million.

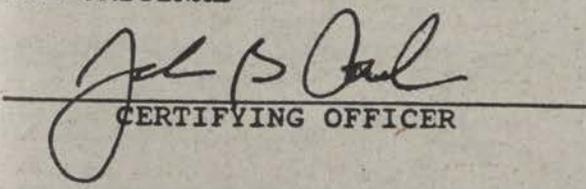
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William B. Clinton

THE WHITE HOUSE,

May 2, 1994.

CERTIFIED TO BE A TRUE COPY OF
THE ORIGINAL



CERTIFYING OFFICER

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

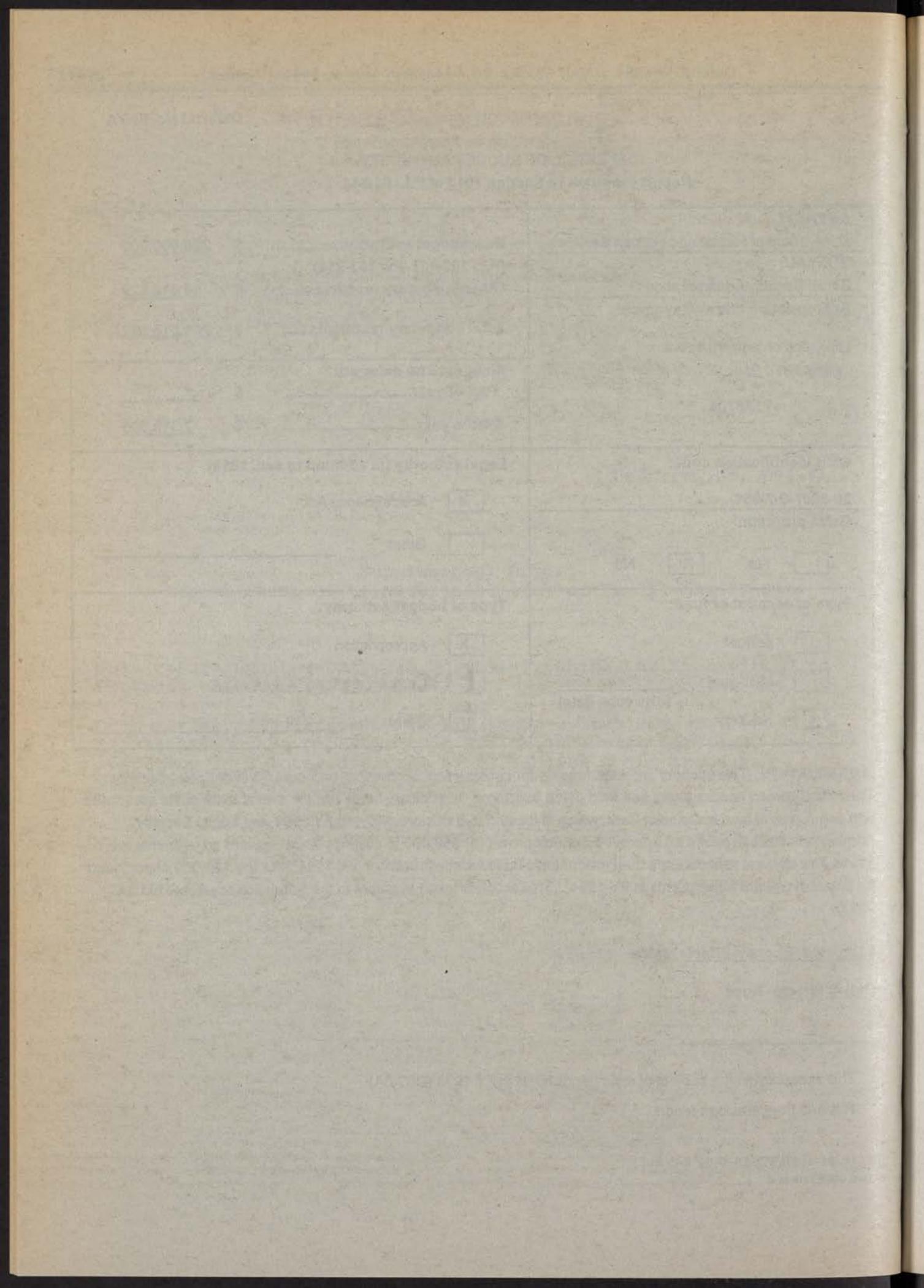
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	Department of Health and Human Services:	
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Federal Register

Monday
May 9, 1994

Part VII

Federal Trade Commission

16 CFR Part 309

Labeling Requirements for Alternative
Fuels and Alternative Fueled Vehicles;
Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 309

RIN 3084-AA57

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 406(a) of the Energy Policy Act of 1992 directs the Federal Trade Commission ("Commission") to establish uniform labeling requirements for alternative fuels and alternative fueled vehicles. This notice announces the substance of the Commission's proposed rule implementing that directive. The Commission invites interested persons to submit written comments addressing any issue they believe may bear upon the proposed rule. Following the period for written comments, Commission staff will conduct a Public Workshop-Conference to afford interested persons an opportunity to discuss issues raised during the comment period. The Public Workshop-Conference will be held on July 20-21, 1994. After reviewing comments received in response to this notice, the transcript of the Public Workshop-Conference, and any other properly filed submissions, the Commission will publish a Supplemental Notice of Proposed Rulemaking in which it will propose the text of a labeling rule.

DATES: Written comments must be submitted on or before June 23, 1994. Notification of interest to participate in the Public Workshop-Conference must be received on or before June 8, 1994. The Public Workshop-Conference is scheduled to be held at the Federal Trade Commission, Sixth and Pennsylvania Avenue, NW., Washington, DC, on July 20-21, 1994, from 9 a.m. until 5 p.m.

ADDRESSES: Written comments and requests to participate in the Public Workshop-Conference should be sent to the Division of Enforcement, Federal Trade Commission, 601 Pennsylvania Avenue, NW., Washington, DC 20580, Attn: Jeffrey E. Feinstein, Room S-4618. The Commission requests that original submissions be filed with six copies, if feasible. Submissions should be identified as "16 CFR Part 309—Comment" and "16 CFR Part 309—Request to Participate in Public Workshop-Conference" as appropriate. If submissions are made by facsimile transmission, please call 202/326-2372 to confirm receipt.

FOR FURTHER INFORMATION CONTACT: Jeffrey E. Feinstein, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, telephone 202/326-2372.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 406(a) of the Energy Policy Act of 1992 ("EPA 92") directs the Commission to issue a rule establishing uniform labeling requirements, to the greatest extent practicable, for alternative fuels¹ and alternative fueled vehicles² ("AFVs").³ The Act does not specify what information should be displayed on these labels. Instead, it provides generally that the rule must require disclosure of "appropriate" cost and benefit information to enable the consumer to make reasonable purchasing choices and comparisons.⁴ In formulating the rule, the Commission must consider the problems associated with developing and publishing "useful and timely" information, taking into account lead time, costs, frequency of changes in costs and benefits that may occur, and other relevant factors.⁵ The labels themselves must be simple and, where appropriate, consolidated with other labels providing information to consumers.⁶

EPA 92 further directs the Department of Energy ("DOE") to coordinate its development of an information package with the Commission's promulgation of labeling requirements.⁷ Specifically, section 405 of EPA 92 requires DOE to produce and make available an information package for consumers to help them choose among alternative fuels and AFVs.⁸ DOE's information

¹ "Alternative fuels" are defined as: [M]ethanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary [of Energy], by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits[.]

² 42 U.S.C.A. 13211(2) (West Supp. 1993).

³ An "alternative fueled vehicle" is "a dedicated vehicle or a dual fueled vehicle." 42 U.S.C.A. 13211(3) (West Supp. 1993). Each term is further defined in 42 U.S.C.A. 13211(6) and (8) (West Supp. 1993).

⁴ Pub. L. No. 102-486, 106 Stat. 2776 (1992). Section 406(a) is codified at 42 U.S.C.A. 13232(a) (West Supp. 1993).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 42 U.S.C.A. 13232(b) (West Supp. 1993).

⁹ 42 U.S.C.A. 13231 (West Supp. 1993).

package must provide "relevant and objective" information addressing seven "motor vehicle and fuel characteristics as compared to gasoline" (including environmental performance, energy efficiency, domestic content, cost, maintenance requirements, reliability, and safety), information about the conversion of conventional motor vehicles to AFVs, and "such other information as the Secretary [of DOE] determines is reasonable and necessary to help promote the use of alternative fuels in motor vehicles."⁹

According to EPA 92, the DOE Secretary is to provide technical assistance to the Commission in developing its labeling requirements,¹⁰ and the Commission is to issue this notice of proposed rulemaking "in consultation with" the DOE Secretary, the Administrator of the Environmental Protection Agency, and the Secretary of Transportation.¹¹ EPA 92 requires the Commission to issue a final labeling rule within one year of this notice of proposed rulemaking and to update its rule "periodically to reflect the most recent available information."¹²

This is the Commission's second rulemaking concerning labeling requirements for alternative fuels. In a separate proceeding also required by EPA 92,¹³ the Commission recently extended the requirements of its former Octane Rule¹⁴ (renamed the "Fuel Rating Rule") beyond gasoline to include liquid alternative fuels.¹⁵ As a result, retailers of such fuels are now required, among other things, to post labels identifying the commonly used name of the fuel and the amount, expressed as a minimum percentage by volume, of the fuel's principal component.¹⁶

EPA 92 requires the Commission, in formulating its rule, to obtain the views of affected industries, consumer organizations, Federal and State agencies, and all other interested parties.¹⁷ The Commission has

⁹ *Id.*

¹⁰ *Id.*

¹¹ 42 U.S.C.A. 13232(a) (West Supp. 1993). During its development of this notice, Commission staff discussed the proposed labeling requirements with staff from DOE, EPA, and DOT's National Highway Traffic Safety Administration.

¹² *Id.*

¹³ 15 U.S.C.A. 2821-2823 (West Supp. 1993).

¹⁴ Octane Posting and Certification, 16 CFR Part 306.

¹⁵ 58 FR 41356, 41373, Aug. 3, 1993 (to be codified at 16 CFR 306.0(i)(2)). In that proceeding, the Commission had no authority to extend its requirements beyond liquid alternative fuels. 15 U.S.C.A. 2821 (West Supp. 1993).

¹⁶ 58 FR at 41373 (to be codified at 16 CFR 306.0(j)(2)). The Fuel Rating Rule became effective October 25, 1993. *Id.* at 41356.

¹⁷ 42 U.S.C.A. 13232(a) (West Supp. 1993).

concluded that EPA 92 authorizes use of the notice and comment rulemaking procedures of the Administrative Procedure Act ("APA") to obtain the views of these entities.¹⁸ Pursuant to section 553(b)(3) of the APA, the Commission has elected to publish the substance, instead of the specific language, of its proposed rule.¹⁹

The Commission seeks comment (written comment in response to this notice and oral testimony during the Public Workshop-Conference) on whether the proposed rule will accomplish the purposes of section 406(a). The Commission also seeks comment on whether some variation of this proposal, or other options or variations not proposed here, would be more appropriate.

II. The Commission's Advance Notice of Proposed Rulemaking

To assist in the development of its proposed labeling requirements and this notice, the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") in the Federal Register on December 10, 1993,²⁰ seeking comment until January 26, 1994, on basic issues raised by this proceeding. In its ANPR, the Commission requested comment on issues relating to which fuels and vehicles should be covered by the labeling requirements (i.e., the proposed rule's scope), and what information should be required to be displayed on labels (i.e., the proposed rule's disclosures). The Commission also sought comment on how the labeling requirements should be updated, and the extent to which the labels should be consolidated with other labels providing information to consumers.

In response to the ANPR, the Commission received a total of 28 comments. These comments were from vehicle manufacturers,²¹ fuel producers,²² governmental entities,²³

and organizations representing affected interests.²⁴ All the comments were placed on the public record pertaining to this proceeding.²⁵ Comments addressing issues raised in the ANPR are discussed below.

A. Scope

1. Alternative Fuels

To help determine which fuels should be addressed by the proposed rule, the Commission requested comment on which alternative fuels are presently available for consumer use.²⁶ The comments stated that compressed and liquefied natural gas ("CNG" and "LNG," respectively),²⁷ ethanol,²⁸ methanol,²⁹ liquefied petroleum gas ("LPG"),³⁰ electricity,³¹ coal-derived

liquid fuels,³² reformulated petroleum,³³ and soy diesel³⁴ are all alternative fuels presently available for consumer use. In response to a separate question, several comments also addressed the composition, means of production, and the costs and benefits involved in utilizing alternative fuels for transportation.³⁵

The Commission also asked whether the scope of its labeling requirement should be limited to presently available alternative fuels.³⁶ Sixteen comments addressed this issue: Seven recommended that coverage be limited to presently available alternative fuels,³⁷ three recommended that coverage not be limited to such fuels,³⁸ and six recommended that the Commission adopt an approach flexible enough to cover new alternative fuels as they become commercially available.³⁹

Because not every alternative fuel is dispensed from a conventional fuel pump (e.g., electricity is dispensed from a recharging unit), the Commission requested comment regarding how such alternative fuels should be labeled.⁴⁰ No comments provided specific suggestions on this point. ETC and Ford stated that only public recharging stations should be labeled.⁴¹ Six other commenters stated that all such refueling stations should be labeled to help consumers choose the correct fuel for their engines.⁴² Mobil stated that "it is moot

End Use and Integrated Statistics Division (EIA/EEU-ISD), E-9; U.S. Department of Energy, Energy Information Administration, Office of Integrated Analysis and Forecasting (EIA/OIAF), E-3; U.S. Department of Transportation, National Highway Traffic Safety Administration (DOT/NHTSA), E-2; U.S. Environmental Protection Agency (EPA), E-5; Wisconsin Department of Natural Resources (WDNR), E-7.

²⁴ American Automobile Manufacturers Association (AAMA), D-3; American Gas Association (AGA) and Natural Gas Vehicles Coalition (NGVC), D-8; American Methanol Institute (AMI), D-7; American Petroleum Institute (API), D-17; Electric Transportation Coalition (ETC), D-14; Engine Manufacturers Association (EMA), D-18; National Corn Growers Association (NCGA), D-9; National Propane Gas Association (NPGA), D-5; Propane Consumers Coalition (PCC), D-6; Renewable Fuels Association (RFA), D-2.

²⁵ Commission's Rulemaking Record No. R311002. Comments from nongovernmental sources were coded "D"; comments from governmental agencies were coded "E."

²⁶ 58 FR at 64915. In the Fuel Rating Rule proceeding, the Commission had identified six commercially-available liquid alternative fuels: methanol; denatured ethanol; M85 (85% methanol, 15% gasoline); E85 (85% denatured ethanol, 15% gasoline); liquefied natural gas (LNG); and liquefied petroleum gas (LPG). 58 FR 16464, 16484, Mar. 26, 1993.

²⁷ AAMA, D-3, 1; AGA/NGVC, D-8, 4-5 (CNG and LNG); API, D-17, 2-3 (LNG); Boston Edison, D-11, 9 (CNG and LNG); Chicago, E-4, 1 (CNG); DOE, E-10, 2 (CNG); DOT/NHTSA, E-2, 1 (CNG); EIA/OIAF, E-3, 1; Ford, D-10, 1; Mobil, D-16, 1 (CNG); NCGA, D-9, 1 (CNG); RFA, D-2, 2 (CNG); Sun, D-13, 1 (CNG and LNG).

²⁸ AAMA, D-3, 1 (E85); API, D-17, 2-3; Boston Edison, D-11, 9; Chicago, E-4, 1; DOE, E-10, 2 (E85); EIA/OIAF, E-3, 1; Ford, D-10, 1 (E85); Minnesota, E-8, 1; Mobil, D-16, 1 (E85 through E100); NCGA, D-9, 1; RFA, D-2, 2 (E85); Sun, D-13, 1 (E85).

²⁹ AAMA, D-3, 1 (M85 and M100); AMI, D-7, 1 (M85, M100G for gasoline engines, and M100D for diesel engines); API, D-17, 2-3; DOE, E-10, 2 (M85); Boston Edison, D-11, 9; EIA/OIAF, E-3, 1; Ford, D-10, 1 (M85 and M100); Minnesota, E-8, 1; Mobil, D-16, 1 (M85 through M100); NCGA, D-9, 1; RFA, D-2, 2 (M85); Sun, D-13, 1 (M85).

³⁰ AAMA, D-3, 1; API, D-17, 2-3; Boston Edison, D-11, 9 (propane); DOE, E-10, 2; EIA/OIAF, E-3, 1; Ford, D-10, 1; Mobil, D-16, 1; NCGA, D-9, 1; NPGA, D-5, 1; RFA, D-2, 2; Sun, D-13, 1.

³¹ AAMA, D-3, 1; API, D-17, 2-3; Boston Edison, D-11, 9; Chicago, E-4, 1; DOE, E-10, 2; EIA/OIAF, E-3, 1; ETC, D-14, 1; Ford, D-10, 1; Mobil, D-16, 1; NCGA, D-9, 1; Sun, D-13, 1.

³² API, D-17, 2-3.

³³ Boston Edison, D-11, 9. Reformulated gasoline, however, may not constitute an alternative fuel for purposes of the statute because it is merely a reformulation of conventional gasoline. See 42 U.S.C.A. 13211(2) (West Supp. 1993) (alternative fuels are "substantially not petroleum").

³⁴ Chicago, E-4, 1.

³⁵ AAMA, D-3, Att. 2; AGA/NGVC, D-8, 4-5; Boston Edison, D-11, 7; ETC, D-14, 1-3; Mobil, D-16, 1; NPGA, D-5, 1-3; RFA, D-2, 2-3.

³⁶ 58 FR 64914, 64915, Dec. 10, 1993.

³⁷ Boston Edison, D-11, 9; Chicago, E-4, 2; EIA/EEU-ISD, E-9, 2; EIA/OIAF, E-3, 1; EMA, D-18, 2; Mobil, D-16, 2; RFA, D-2, 3.

³⁸ DOE, E-10, 3 (coverage should extend to M100 and E100); NPGA, D-5, 3 (coverage should extend to presently "recognized" alternative fuels); PCC, D-6, 1 (coverage should extend to all alternative fuels specified in EPA 92, including any that the DOE Secretary designates).

³⁹ AAMA, D-3, 1; API, D-17, 3; EIA/EDID, E-1, 1; ETC, D-14, 3; Ford, D-10, 1; NCGA, D-9, 1.

⁴⁰ 58 FR 64914, 64915, Dec. 10, 1993.

⁴¹ ETC, D-14, 4 (requiring private electrical outlets to be labeled would be "impractical"; however, new, EV-only outlets and public recharging facilities should be labeled); Ford, D-10, 1 ("[o]nly public alternative fueling (or recharging) stations should be covered"). Ford stated that "[t]he types of labels should be consistent for all types of fuel dispensers," but did not indicate why the labeling requirement should be limited to public stations.

⁴² AAMA, D-3, 2; API, D-17, 3; Boston Edison, D-11, 9; Chicago, E-4, 2; EIA/EDID, E-1, 2; EMA, D-18, 2.

¹⁸ 5 U.S.C. 553 (b) and (c).

¹⁹ 5 U.S.C. 553(b)(3).

²⁰ 58 FR 64914, Dec. 10, 1993.

²¹ The Flexible Corporation (Flexible), D-4; Ford Motor Company (Ford), D-10; General Motors (GM), D-12; Honda North America, Inc., American Honda Motor Co., Inc., Honda of America, Mfg., Inc., and Honda Motor Co. Ltd. (Honda), D-15; Volvo GM Heavy Truck Corporation (Volvo/GM), D-1.

²² Boston Edison Company (Boston Edison), D-11; Mobil Oil Corporation (Mobil), D-16; Sun Company, Inc. (Sun), D-13.

²³ City of Chicago (Chicago), E-4; Minnesota Department of Agriculture (Minnesota), E-8; Nebraska Energy Office, Alternative Fuels Advisory Committee, Suppliers Subcommittee (Nebraska AFAC), E-6; U.S. Department of Energy (DOE), E-10; U.S. Department of Energy, Energy Information Administration, Energy Demand and Integration Division (EIA/EDID), E-1; U.S. Department of Energy, Energy Information Administration, Energy

as to where the data should be labeled" because "labeling of information that is not technically proven is not recommended at this time."⁴³ NPGA suggested that no comparative information be disclosed for alternative fuels because comparative information is not needed when refueling.⁴⁴

2. Alternative Fueled Vehicles

To address the Commission's responsibility to issue labeling requirements for AFVs (to the extent practicable), the Commission sought comment on whether it should require labeling for all or only some AFVs.⁴⁵ Fifteen of the twenty-one responsive comments stated that all dedicated and dual fueled vehicles should be covered.⁴⁶ Three comments recommended that medium and heavy-duty, commercial vehicles be excluded from coverage because these vehicles are custom ordered by purchasers well informed about the operating costs and performance of their planned purchase.⁴⁷

AAMA, Honda and Mobil, without explaining how the Commission could otherwise satisfy the statutory directive, recommended that no vehicles be subjected to a labeling requirement.⁴⁸ AAMA stated that all the relevant information necessary for making comparisons among AFVs is already available on existing vehicle labels.⁴⁹ Honda stated that labeling should be postponed until the market and infrastructure are more developed.⁵⁰ Mobil stated that until such time as scientifically sound data can be published, made available for public comment, and accepted by the appropriate governmental agencies, labeling of fuels or vehicles with benefit and cost claims appears to be an inappropriate action.⁵¹

The Commission also requested comment regarding whether its labeling requirements should extend to vehicles

converted to use alternative fuels "after market" (i.e., after sale of the vehicles by original equipment manufacturers).⁵² Eighteen comments addressed this issue. Twelve said that coverage should extend to all aftermarket conversions because all AFVs should be subjected to the same labeling requirements.⁵³ Five comments stated that labeling requirements would be difficult, and perhaps unnecessary, for vehicles already owned and operated.⁵⁴

B. Labeling Disclosures

As noted previously, the cost and benefit information required by the Commission's labeling rule must be "appropriate," "useful," and "timely."⁵⁵ None of those terms, however, is defined in EPA 92. In its ANPR, the Commission thus sought comment addressing three issues concerning the information to be disclosed in its labeling requirements.

First, the Commission sought comment on whether it should target required labeling to a particular audience of consumers (e.g., individual purchasers or fleet owners).⁵⁶ In response, eight comments indicated that the Commission should not target particular market segments.⁵⁷ RFA stated that the information required on vehicle labels should be easily understandable by all consumers.⁵⁸ AAMA, however, stated that the information should be targeted to individual consumers (presumably as opposed to fleet owners) "so that consumers can make reasonable choices."⁵⁹

Second, the Commission sought comment on what information consumers would need to compare different alternative fuels and AFVs.⁶⁰ To compare conventional fuels (i.e., gasoline and diesel) with alternative fuels, the comments stated that

information regarding the following would be important: price,⁶¹ emissions,⁶² mileage,⁶³ energy content,⁶⁴ domestic content (i.e., the percentage of the fuel derived from domestic natural resources),⁶⁵ and hazards, if any.⁶⁶ The comments further stated that information about similar factors would help consumers choose among different alternative fuels.⁶⁷

To compare conventional vehicles with AFVs, the comments stated that consumers will need cost information relating to the fuel, initial vehicle price, and vehicle operation and maintenance.⁶⁸ In addition to cost, the comments stated that information on the following additional factors would be useful: emissions;⁶⁹ fuel type;⁷⁰ mileage;⁷¹ average tank, fuel or storage unit capacity;⁷² refueling time;⁷³ cruising range;⁷⁴ availability and access to refueling stations and facilities;⁷⁵ safety;⁷⁶ resale value;⁷⁷ and tax consequences.⁷⁸

The comments stated that comparing different AFVs would require an evaluation of the same factors.⁷⁹ For

⁴³ AGA/NGVC, D-8, 9-10, 12; ETC, D-14, 5; Mobil, D-16, 4; NPGA, D-5, 5; PCC, D-6, 2-3.

⁴⁴ Boston Edison, D-11, 6, 12-14; Chicago, E-4, 4; ETC, D-14, 5; NPGA, D-5, 5.

⁴⁵ Chicago, E-4, 4; NPGA, D-5, 5.

⁴⁶ AGA/NGVC, D-8, 9-10, 12; ETC, D-14, 5.

⁴⁷ Boston Edison, D-11, 6, 12-14; Chicago, E-4, 4; ETC, D-14, 5.

⁴⁸ Boston Edison, D-11, 12; Chicago, E-4, 4.

⁴⁹ Fuel cost: AMI, D-7, 3; DOE, E-10, 3; ETC, D-14, 6; EIA/EEU-ISD, E-9, 1; Mobil, D-16, 4; emissions: NPGA, D-5, 5; AMI, D-7, 3; and ETC, D-14, 6; composition: AMI, D-7, 3; octane or cetane rating: AMI, D-7, 3; EMA, D-18, 2; Nebraska AFAC, E-6, 2; domestic content: NCGA, D-9, 2; health and safety: NCGA, D-9, 2; EMA, D-18, 2; Nebraska AFAC, E-6, 2; WDNR, E-7, 1; refueling access and ease: ETC, D-14, 6; usage limitations: ETC, D-14, 6; EMA, D-18, 2; usage requirements: ETC, D-14, 6.

⁵⁰ AGA/NGVC, D-8, 10-11; API, D-17, 5; Chicago, E-4, 4; ETC, D-14, 5-6; PCC, D-6, 4.

⁵¹ AGA/NGVC, D-8, 10-11; API, D-17, 5; Chicago, E-4, 4; ETC, D-14, 5-6; NPGA, D-5, 5; PCC, D-6, 4; RFA, D-2, 3-4.

⁵² API, D-17, 5; ETC, D-14, 5-6.

⁵³ Chicago, E-4, 4; NPGA, D-5, 5; RFA, D-2, 3-4.

⁵⁴ RFA, D-2, 3-4.

⁵⁵ API, D-17, 5.

⁵⁶ API, D-17, 5; PCC, D-6, 4; RFA, D-2, 3-4.

⁵⁷ API, D-17, 5; NPGA, D-5, 5; PCC, D-6, 4.

⁵⁸ Chicago, E-4, 4; PCC, D-6, 4.

⁵⁹ ETC, D-14, 5-6; PCC, D-6, 4.

⁶⁰ API, D-17, 5. API did not specify what those consequences would be.

⁶¹ Fuel type: AAMA, D-3, 1-2; AMI, D-7, 4-5; DOT/NHTSA, E-2, 2; EIA/EEU-ISD, E-9, 1; Flexible, D-4, 2; Honda, D-15, 3-4; NCGA, D-9, 2; Nebraska AFAC, E-6, 1; WDNR, E-7, 1; fuel economy: AAMA, D-3, 1-2; AMI, D-7, 4-5; DOE, E-10, 4; Honda, D-15, 3-4; NPGA, D-5, 5; Sun, D-13, 2; WDNR, E-7, 1; fuel cost: AAMA, D-3, 1-2; AMI, D-7, 4-5; DOT/NHTSA, E-2, 2; EIA/OIAF, E-3, 1; Honda, D-15, 3-4; Nebraska AFAC, E-6, 1; Sun, D-13, 2; emissions certification: AAMA, D-3, 1-2; AMI, D-7, 4-5; EIA/EDID, E-1, 2-3; EIA/EEU-ISD,

⁵² 58 FR 64914, 64915, Dec. 10, 1993.

⁵³ AAMA, D-3, 2; Boston Edison, D-11, 10; Chicago, E-4, 3; EIA/EEU-ISD, E-9, 2; EIA/EDID, E-1, 2; Flexible, D-4, 2; Honda, D-15, 4-5; NCGA, D-9, 2; NPGA, D-5, 4; PCC, D-6, 2; RFA, D-2, 3 (but only a portion of the information required of new vehicles should appear on the label); Sun, D-13, 2. DOT/NHTSA stated that it is considering labeling information for CNG-powered vehicles, and that this information "would be equally applicable if the container is fitted to a new vehicle or a converted vehicle." DOT/NHTSA, E-2, 1.

⁵⁴ AGA/NGVC, D-8, 8; DOE, E-10, 3-4; EIA/OIAF, E-3, 1; ETC, D-14, 4; Ford, D-10, 1.

⁵⁵ 42 U.S.C.A. 13232(a) (West Supp. 1993).

⁵⁶ 58 FR at 64915.

⁵⁷ AGA/NGVC, D-8, 8; Boston Edison, D-11, 11; Chicago, E-4, 4; EIA/EDID, E-1, 2; ETC, D-14, 5; Mobil, D-16, 3; NPGA, D-5, 4; PCC, D-6, 2.

⁵⁸ RFA, D-2, 3.

⁵⁹ AAMA, D-3, 2. This comment did not further explain why the Commission's labeling requirements should target this audience.

⁶⁰ 58 FR 64915.

⁴³ Mobil, D-16, 3.

⁴⁴ NPGA, D-5, 3.

⁴⁵ 58 FR at 64915.

⁴⁶ AGA/NGVC, D-8, 7; API, D-17, 4; Boston Edison, D-11, 10; Chicago, E-4, 2; DOE, E-10, 3; EIA/EDID, E-1, 2; EIA/EEU-ISD, E-9, 2; ETC, D-14, 4; Flexible, D-4, 2; Ford, D-10, 1; Honda, D-15, 5; PCC, D-6, 2; RFA, D-2, 3; Sun, D-13, 2; WDNR, E-7, 1. EIA/OIAF suggested that AFV's available for purchase by "the public" (i.e., individual purchasers or fleet owners) should be labeled. That comment did not explain the reason for this formulation. EIA/OIAF, E-3, 1.

⁴⁷ EMA, D-18, 1-2; GM, D-12, 1; Volvo/GM, D-1, 1.

⁴⁸ AAMA, D-3, 2; Mobil, D-16, 3. Ford and GM indicated that they supported AAMA's comments. Ford, D-10, 1; GM, D-12, 1.

⁴⁹ AAMA, D-3, 2.

⁵⁰ Honda, D-15, 7.

⁵¹ Mobil, D-16, 3.

those comparisons, the comments also indicated that consumers will need to know the AFV's price,⁸⁰ maintenance costs,⁸¹ passenger and cargo space,⁸² vehicle performance,⁸³ and fuel composition.⁸⁴ Three comments also stated that consumers will need telephone numbers for additional sources of information about alternative fuels and AFVs.⁸⁵

Third, the Commission sought comment on the information that should be disclosed (as opposed to merely what is relevant) to consumers to help them make reasonable purchasing choices and comparisons.⁸⁶ The most frequently mentioned factor to be disclosed on fuel dispensers was unit pricing information comparing the cost of the fuel to a standard unit (e.g., a gallon of gasoline).⁸⁷ Other factors included health and safety information,⁸⁸ and fuel type (or name),⁸⁹ rating (octane or cetane, as appropriate),⁹⁰ emissions,⁹¹ energy content,⁹² principal ingredient,⁹³ and quantity purchased.⁹⁴ Boston Edison stated that the labels should identify the percentage of fuel that

comes from domestic sources.⁹⁵ The Minnesota Department of Agriculture said there is no need to mandate labels on the fuel dispenser itself because "[w]hen the fuel is being sold by private marketers, they will provide the most appropriate labeling for any individual marketplace."⁹⁶

As to vehicle labeling, the comments recommended that information regarding cost,⁹⁷ emissions,⁹⁸ fuel economy,⁹⁹ safety,¹⁰⁰ fuel type,¹⁰¹ and performance (e.g., cruising range)¹⁰² be disclosed on a label on the vehicle. Other suggested disclosures included domestic content of the fuel,¹⁰³ ownership type (individual or fleet),¹⁰⁴ tank capacity,¹⁰⁵ and fuel availability.¹⁰⁶ Two comments recommended certain disclosures for AFVs, but did not specify where the required information should be disclosed (i.e., on a label, in a fact sheet, or elsewhere).¹⁰⁷ API suggested that the Commission develop a brochure for consumers disclosing pertinent information.¹⁰⁸

C. Updating Labeling Disclosures

Because EPA 92 requires the Commission to update its labeling requirements "periodically," the Commission sought comment on how frequently it should update its labeling requirements.¹⁰⁹ Eight comments stated that the Commission should review its labeling requirements at regular

intervals (i.e., either annually,¹¹⁰ or every two,¹¹¹ three,¹¹² or five to ten years).¹¹³ Other comments indicated that the Commission should update labels only when necessary to reflect practical developments in technology.¹¹⁴ Mobil stated that label updating should reflect fuel cost changes.¹¹⁵

D. Consolidation

Finally, the Commission sought comment regarding section 406(a)'s direction that the Commission consolidate its labels with other labels providing information to consumers "where appropriate."¹¹⁶ Four comments suggested that the required information could be consolidated with existing fuel economy labels.¹¹⁷ Five other comments suggested that consolidation would be difficult or would provide no benefit to consumers.¹¹⁸ One comment stated that these labeling requirements should not duplicate existing labels.¹¹⁹

III. Proposed Labeling Rule

In developing its labeling proposal, the Commission is required to reconcile several competing concerns. As noted previously, EPA 92 directs the Commission to develop uniform labels disclosing appropriate cost and benefit information.¹²⁰ However, in determining what information is appropriate, it must consider the problems associated with developing and publishing such information.¹²¹ The information to be disclosed also must be displayed on simple labels.¹²² Given this context, and after considering the comments, the Commission proposes separate labeling requirements for alternative fuels and AFVs, to become effective 90 days after publication of a final rule in the *Federal Register*. Because few consumers have extensive experience with either alternative fuels or AFVs, the Commission's proposal is designed to be of use to a general consumer audience.

E-9, 1; ETC, D-14, 6; Nebraska AFAC, E-6, 1; NPGA, D-5, 5; WDNR, E-7, 1; *cruising range*: DOE, E-10, 4; EIA/OIAF, E-3, 1; ETC, D-14, 6; Honda, D-15, 3-4; Sun, D-13, 2; WDNR, E-7, 1; *fuel tank capacity*: EIA/EEU-USD, E-9, 1; Sun, D-13, 2; *safety*: EIA/EDID, E-1, 2-3; NCGA, D-9, 2; Nebraska AFAC, E-6, 1; *refueling ease and access*: ETC, D-14, 6; Nebraska AFAC, E-8, 1; NPGA, D-5, 5; *refueling time*: DOE, E-10, 4; EIA/OIAF, E-3, 1.

⁸⁰ AAMA, D-3, 1-2; EIA/EDID, E-1, 2-3; ETC, D-14, 6.

⁸¹ AMI, D-7, 4-5; EIA/EDID, E-1, 2-3; Nebraska AFAC, E-6, 1.

⁸² EIA/EEU-USD, E-9, 1; ETC, D-14, 6.

⁸³ EIA/EDID, E-1, 2-3; ETC, D-14, 6; Nebraska AFAC, E-6, 1.

⁸⁴ Nebraska AFAC, E-6, 1. The comments further indicated that consumers will need to know whether the vehicle has been converted to alternative fuel operation and, if so, the identity of the manufacturer of the conversion kit and the installer of the system. AAMA, D-3, 1-2; AMI, D-7, 4-5; NCGA, D-9, 2. One comment stated that consumers will need to know the expected battery life for electric vehicles. EIA/OIAF, E-3, 1.

⁸⁵ EIA/EEU-USD, E-9, 1; Minnesota, E-8, 2-3; NCGA, D-9, 2.

⁸⁶ 58 FR 64914, 64915, Dec. 10, 1993.

⁸⁷ AAMA, D-3, 2; AMI, D-7, 3; Boston Edison, D-11, 12; DOE, E-10, 3; EIA/EEU-USD, E-9, 2; ETC, D-14, 7; Mobil, D-16, 5; PCC, D-6, 3.

⁸⁸ EMA, D-18, 3; EMA, D-18, 3; ETC, D-14, 7; Nebraska, E-6, 2; NHTSA, E-2, 2; WDNR, E-7, 2.

⁸⁹ AAMA, D-3, 2; AMI, D-7, 3; API, D-17, 4-5; EIA/EEU-USD, E-9, 2; Nebraska, E-6, 2; NHTSA, E-2, 2; Sun, D-13, 1.

⁹⁰ AMI, D-7, 3; EMA, D-18, 3; Nebraska, E-6, 2.

⁹¹ AMI, D-7, 3; Boston Edison, D-11, 12.

⁹² AGA/NGVC, D-8, 9-10 (labels should compare "the amount of energy in different fuels by indicating the quantity * * * of different fuels needed to equal the energy content in gasoline"); Boston Edison, D-11, 11 (the British Thermal Unit "provides the most accurate unit of measure that can be used to evaluate the relative merits of each type of fuel").

⁹³ AMI, D-7, 3.

⁹⁴ EIA/EEU-USD, E-9, 2.

⁹⁵ Boston Edison, D-11, 12.

⁹⁶ Minnesota, E-8, 3.

⁹⁷ AGA/NGVC, D-8, 9-10; AMI, D-7, 5; Boston Edison, D-11, 12; EIA/EDID, E-1, 2; EIA/EEU-USD, E-9, 2; EIA/OIAF, E-3, 1; ETC, D-14, 7; RFA, D-2, 4.

⁹⁸ AGA/NGVC, D-8, 10-11; Boston Edison, D-11, 12; EIA/EEU-USD, E-9, 2; ETC, D-14, 7; RFA, D-2, 4; WDNR, E-7, 2.

⁹⁹ AMI, D-7, 5; DOE, E-10, 4; RFA, D-2, 4; Sun, D-13, 2; WDNR, E-7, 2.

¹⁰⁰ EIA/EDID, E-1, 2-3; EIA/EEU-USD, E-9, 2; NHTSA, E-2, 2; WDNR, E-7, 2.

¹⁰¹ AMI, D-7, 4; API, D-17, 6; EIA/EEU-USD, E-9, 2; Flixible, D-4, 2; Minnesota, E-8, 3; NHTSA, E-2, 2; WDNR, E-7, 2.

¹⁰² Boston Edison, D-11, 12; EIA/EDID, E-1, 2; EIA/EEU-USD, E-9, 2; EIA/OIAF, E-3, 1; RFA, D-2, 4; WDNR, E-7, 2.

¹⁰³ Boston Edison, D-11, 12; RFA, D-2, 4.

¹⁰⁴ WDNR, E-7, 2.

¹⁰⁵ EIA/EEU-USD, E-9, 2; RFA, D-2, 4. DOE

recommended refueling time and refueling frequency. DOE, E-10, 4.

¹⁰⁶ EIA/EEU-USD, E-9, 2.

¹⁰⁷ Chicago, E-4, 4 (alternative fuel mix ratio, economic advantages, energy efficiency, environmental performance, miles/alternative fuel gallon); NCGA, D-9, 2 (domestic content, renewable content, Global Warming Index rating, health/safety information).

¹⁰⁸ API, D-17, 5. The suggested brochure would disclose "relative fuel costs, maintenance costs, operational costs, emissions reductions, possible tax consequences, and the type of fuel needed to power an AFV."

¹⁰⁹ 58 FR 64914, 64915, Dec. 10, 1993.

¹¹⁰ AGA/NGVC, D-8, 13; Boston Edison, D-11, 16; DOE, E-10, 4; EIA/OIAF, E-3, 1.

¹¹¹ Chicago, E-4, 4-5; ETC, D-14, 8.

¹¹² AMI, D-7, 5.

¹¹³ RFA, D-2, 5.

¹¹⁴ NCGA, D-9, 3; NPGA, D-5, 6.

¹¹⁵ Mobil, D-16, 5.

¹¹⁶ 42 U.S.C.A. 13232(a) (West Supp. 1993).

¹¹⁷ AGA/NGVC, D-8, 13; EPA, E-5, 5

(consolidation with EPA labels should be

"investigate[d]"); Ford, D-10, 1; NPGA, D-5, 6.

¹¹⁸ API, D-17, 7; DOE, E-10, 4; Mobil, D-16, 6; NCGA, D-9, 3; RFA, D-2, 5.

¹¹⁹ ETC, D-14, 8.

¹²⁰ 42 U.S.C.A. 13232(a) (West Supp. 1993).

¹²¹ *Id.*

¹²² *Id.*

A. Alternative Fuel Labeling

For the fuel labeling requirement, the Commission proposes that retailers of non-liquid alternative fuels post standard labels identifying the commonly used names of those fuels on fuel dispensers and recharging stations servicing consumers. The labels would be placed conspicuously in full view of consumers and as near as reasonably practical to the fuel's unit price. The Commission also proposes requiring disclosure of the fuel's principal component and permitting disclosure of other components, expressed as minimum percentages. These proposals are analogous to provisions in the Fuel Rating Rule pertaining to liquid alternative fuels.¹²³ The Commission requests comment on the feasibility of such disclosures and how they may best be accomplished. The Commission also seeks comment on whether a different measure of content (e.g., requiring disclosure of voltage for electricity) would be more appropriate.

CNG, electricity, and hydrogen are the only non-liquid fuels defined as "alternative fuels" in EPA 92.¹²⁴ Although section 406(a) directs the Commission to issue labeling requirements for "alternative fuels" (presumably for all such fuels), the liquid alternative fuels currently are subject to similar requirements imposed by the Fuel Rating Rule. In accordance with section 406(a)'s directive to review the rule "periodically to reflect the most recent available information,"¹²⁵ the Commission will supplement the list of covered fuels as new non-liquid alternative fuels are designated as alternative fuels by DOE.

The Commission developed this relatively simple labeling requirement for fuel dispensers after considering how it might best balance consumers' need for useful and timely cost and benefit information with the problems associated with displaying such information in a simple label format. The requirement provides consumers with the most important pieces of information needed when refueling: Fuel type and composition. Although in the absence of this requirement sellers could be expected to identify the fuel sold, they may not do so in a standardized format. The Commission believes that a standardized format assists consumers in identifying the proper fuel.¹²⁶ Furthermore, it is

uncertain whether they would provide information regarding the precise composition of the fuel.

In addition, comparative information at the fuel pump is unlikely to be necessary in most instances. For consumers with dedicated AFVs (i.e., vehicles capable of operating on only one fuel), the selection process between competing fuels is concluded once an AFV is acquired. Consumers driving dual or flexible fueled vehicles (i.e., vehicles capable of being powered both by a conventional and an alternative fuel) will be limited to purchasing fuels meeting their engines' requirements (one being gasoline, with which consumers are already familiar and which is already labeled with pertinent information). Thus, providing consumers with information comparing various types of alternative fuels is best done prior to the time the vehicle is acquired.

There also are reasons to avoid requiring additional, less important information. One consideration is the avoidance of information overload. In contrast to vehicle purchases, consumers' fuel purchases typically occur in a quick transaction. In a Report to Congress assessing the need for a uniform national label on fuel pumps, the Commission noted that time constraints may affect how consumers read, understand, and use information.¹²⁷ Indeed, "studies show that less accurate information processing occurs under time constraints; test subjects focus on fewer pieces of information and unduly emphasize negative information."¹²⁸ Simplicity therefore is a greater consideration in labeling of fuels than in the labeling of AFVs.

To avoid cluttering labels further, the Commission also believes that it should not consolidate these labels with other mandatory labels or require otherwise duplicative disclosures.¹²⁹ For example, a labeling proposal that the National Conference on Weights and Measures ("NCWM"), a consensus standards-writing organization for state and local regulatory agencies, is considering would require that retail CNG dispensers display the quantity of CNG in gallons-of-gasoline equivalents to help consumers compare the price of CNG to gasoline.¹³⁰

¹²⁷ Federal Trade Commission, Study Of A Uniform National Label For Devices That Dispense Automotive Fuels to Consumers (1993) (hereinafter *FTC Study*), at 29.

¹²⁸ *Id.* at 29 n.152.

¹²⁹ See ETC, D-14, 7-8 (AFV labels should not duplicate existing labels).

¹³⁰ U.S. Department of Commerce, National Institute of Standards and Technology, *Report of*

The proposed labeling requirement also has the advantage of placing equal regulatory requirements on all competing fuels.¹³¹ The Fuel Rating Rule's labeling requirements cover only liquid alternative fuels. Although that Rule serves a different purpose,¹³² the Commission believes that harmonizing labeling requirements, when practicable, is appropriate.¹³³ Fuel Rating Rule labels for liquid alternative fuels must identify the commonly used name of the fuel and the amount, expressed as a minimum percentage by volume, of the fuel's principal component.¹³⁴ That Rule also permits disclosure of other components, also expressed as a minimum percentage.¹³⁵ The Commission is proposing disclosure of the same information for non-liquid alternative fuels. The Commission further proposes that the alternative fuels labels follow the same size and format requirements of the Fuel Rating Rule.¹³⁶ The Commission also seeks comment regarding how the components of those fuels can be calculated or expressed.

B. AFV Labeling

For the AFV labeling requirement, the Commission proposes that original equipment manufacturers ("OEMs") and AFV conversion companies affix, and AFV dealers maintain,¹³⁷ standard labels on new AFVs sold or offered for sale to consumers.¹³⁸ The labels would

the 78th National Conference on Weights and Measures 229-33 (1993).

¹³¹ RFA, D-2, 5 (labeling should extend to all alternative fuels, as that term is defined in EPA 92, sold to consumers); Sun, D-13, 1 (same).

¹³² The purpose of the EPA 92 amendments to title II of the Petroleum Marketing Practices Act, 15 U.S.C. 2821-2825, was to give purchasers information they need to choose the correct type or grade of fuel for their vehicles. 58 FR at 41356.

¹³³ See API, D-17, 4, 8 (labels required by Fuel Rating Rule provide sufficient information); RFA, D-2, 5 (same); Sun, D-13, 1 (fuel descriptor labels should apply to all available alternative fuels). Retailers of liquid alternative fuels have additional responsibilities under the Fuel Rating Rule, e.g., posting consistent with rating certified to retailer and maintaining required records. See 58 FR at 41374 (to be codified as 16 CFR 306.10(d) and 306.11). The Commission believes that those requirements are beyond the scope of its mandate under Section 406(a).

¹³⁴ 58 FR at 41373 (to be codified at 16 CFR 306.0(j)(2)).

¹³⁵ *Id.*

¹³⁶ 58 FR at 41375 (to be codified at 16 CFR 306.12). Labels required by the Fuel Rating Rule are 3 inches wide by 2 1/2 inches long, with process black type on an orange background.

¹³⁷ EPA's fuel economy label is required to be affixed and maintained in a similar fashion. 48 U.S.C. 2006.

¹³⁸ The term "consumer" is not defined in EPA 92. The Commission proposes that "consumer" be defined as a person (i.e., an individual, corporation, or any other business organization) purchasing a new AFV from a dealer or AFV conversion

¹²³ 58 FR at 41374 (to be codified at 16 CFR 306.10(b)(1) and 306.10(f)).

¹²⁴ 42 U.S.C.A. 13211(2) (West Supp. 1993).

¹²⁵ 42 U.S.C.A. 13232(a) (West Supp. 1993).

¹²⁶ Comments stating that fuel type (or name) should be disclosed are cited at note 89.

consist of three parts. The first part would disclose fuel tank capacity of the labeled AFV; the second part would contain a list of comparative factors relevant to AFVs in general; and the third part would direct consumers to other sources of information.

As noted previously, the Commission believes that comparative information would be most useful to consumers prior to the time the vehicle is purchased. In developing its proposal for AFV labeling, the Commission considered requiring disclosure of information pertaining to all the factors cited in the comments, including fuel and/or operating costs and environmental impact (i.e., emissions). Information about those factors would clearly help consumers make purchasing choices, assuming the information was accurate, understandable and comparable.

For most of those factors, however, the Commission has tentatively decided that the level of detail necessary to convey balanced, accurate information to consumers cannot be contained on the "simple" label envisioned by Congress. For example, an accurate assessment of the life-cycle environmental impact of driving a particular vehicle requires a review of numerous factors, including emissions resulting from fuel production, distribution, handling, storage, dispensing, and combustion.¹³⁹ Measuring each of those factors itself requires an analysis of numerous chemical compounds, including carbon monoxide, nitrogen oxides, hydrocarbons, chlorofluorocarbons, volatile organic carbons, radioactive particles, particulate matter, and aerosols. Similarly, evaluating the true costs associated with driving a particular AFV would require information about the vehicle's acquisition (i.e., capital costs in acquiring or converting an AFV) and operation (e.g., fuel costs, repair and maintenance costs, and any tax consequences).¹⁴⁰ All of this

information cannot be presented accurately on a simple label.

Other cost-benefit information (e.g., comparing reliability by measuring each alternative fuel's ability to start a cold engine) is also difficult to disclose on a simple label because no technical standards exist for measuring some factors.¹⁴¹ The Commission often relies on consensus standards-setting organizations, such as the American Society for Testing and Materials ("ASTM"), or governmental agencies with engineering and technical expertise to develop such standards.¹⁴² Here, the comments did not identify any such standards, and the Commission is not otherwise aware that standards exist for all the factors. Without standards upon which to base required disclosures, the information manufacturers would provide would not necessarily be comparable, and this could be confusing to consumers.

EPA 92 also requires DOE to produce a brochure that provides consumers with "relevant and objective" comparative information about AFVs and alternative fuels, including environmental performance, energy efficiency, domestic content, cost, maintenance requirements, reliability, and safety.¹⁴³ DOE's information package also must include information regarding conversion of conventional vehicles to run on alternative fuels.¹⁴⁴ The brochure format will allow DOE latitude to present valuable information in fuller measure. Accordingly, there is less need for the Commission to attempt to present complex information in the constrained format of an AFV label.

As with labeling for alternative fuels, the Commission also believes that it should not consolidate these labels with other mandatory labels or require otherwise duplicative disclosures. For AFV labeling, EPA has proposed that its fuel economy labels (which display estimated miles per gallon and annual fuel cost information) be affixed on AFVs powered by CNG, ethanol, and methanol.¹⁴⁵ For dual fueled vehicles operating on these or conventional

fuels, the proposed regulations would require that fuel economy data be provided only for the conventional fuels; manufacturers would be given the option of posting such data for the alternative fuels.¹⁴⁶ EPA also has been directed to promulgate rules that require fuel economy labeling for vehicles powered by LPG, hydrogen, electricity, and other alternative fuels.¹⁴⁷ Rules requiring disclosure of information about emissions certification¹⁴⁸ and safety¹⁴⁹ are also in effect or under active consideration by other governmental bodies. Because consumers will have immediate access to this information in other required labels, the Commission believes that providing the same information on its AFV labels (in a different format) could confuse consumers, and is not thus appropriate.

As noted previously, EPA 92 directs the Commission to update its labeling requirements "periodically to reflect the most recent available information."¹⁵⁰ The Commission therefore intends to monitor the industry as standards for evaluating other relevant objective factors are developed. As those standards are issued by recognized organizations and agencies, the Commission expects to update this part of the AFV labeling requirements accordingly.

Based on the above considerations, the Commission proposes a labeling requirement containing three parts: (1) Disclosure of fuel tank capacity, (2) a list of factors consumers should consider in purchasing AFVs, and (3) a notice directing consumers to other sources of information.

¹⁴⁶ 56 FR at 8861; EPA, E-5, 3-4. EPA expects that these regulations will be issued "in the near future." EPA, E-5, 5.

¹⁴⁷ 15 U.S.C.A. 2006 (West Supp. 1993).

¹⁴⁸ EPA currently requires emissions certification labels (which state that the vehicle conforms to applicable EPA regulations) for certain 1994 model year AFV's powered by methanol. See 40 CFR 86.094-35(c)(1)(ii)(A) (light duty vehicles); 40 CFR 86.094-35(c)(1)(ii)(B)(1) (light duty trucks). In California, state regulations require that AFV's powered by CNG, ethanol, methanol, and LPG, and conventional vehicles converted to run on any of these fuels, also carry such labels. Section 1965, Title 13, California Code of Regulations (CCR); California Air Resources Board Mail-Out No. 93-34.

¹⁴⁹ The National Highway Traffic Safety Administration (NHTSA) has proposed requiring a permanent label on CNG storage tanks disclosing the name and address of the tank manufacturer, the month and year of manufacture, and the maximum service pressure. 58 FR 5323, Jan. 21, 1993. NHTSA is also considering whether it should require labeling as to the need for periodic reinspection of the CNG container, the need to remove the container from service after its useful life, and the proper fill pressure for refueling the container. DOT/NHTSA, E-2, 1.

¹⁵⁰ 42 U.S.C.A. 13232(a) (West Supp. 1993).

company (i.e., not directly from the manufacturer as a special order). See GM, D-12, 1 (medium and heavy-duty trucks should be excluded from proposed rule's scope because most are custom ordered); Volvo/GM, D-1, 1 (heavy duty trucks, because they are custom ordered, should be excluded). The Commission seeks comment on this definition.

¹³⁹ Assessing only tail-pipe emissions could be easier, but potentially misleading because of the significance of the environmental impact involved in, for example, fuel production.

¹⁴⁰ See, e.g., 26 U.S.C.A. 30, 179A (West Supp. 1993) (creating tax credits for qualified electric vehicles and deductions for clean-fuel vehicles and certain refueling property).

¹⁴¹ Some comments stated that the supporting data on alternative fuels in general are "controversial, ambiguous or misleading," Minnesota, E-8, 3, or "still unproven," Mobil, D-16, 2-3, 5.

¹⁴² See, e.g., 16 CFR 306.0(a), (b) (octane rating based on ASTM specifications); 16 CFR 305.5 (appliance labeling based on DOE test procedures).

¹⁴³ 42 U.S.C.A. 13231 (West Supp. 1993). DOE's information package must be completed within 18 months after EPA 92's enactment date (April 1994) and updated annually "to reflect the most recent available information." *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ 56 FR 8856, 8860, 8869-71, Mar. 1, 1991; EPA, E-5, 2-4.

1. Disclosure of Fuel Tank Capacity

Section 406(a) mandates that the labels disclose cost and benefit information. One principal piece of cost-benefit information is cruising range.¹⁵¹ To help consumers estimate this from available data,¹⁵² the Commission proposes that fuel tank capacity be calculated and displayed for each AFV sold or offered for sale to consumers. Fuel tank capacity would be expressed in gallons for AFVs powered by liquid alternative fuels, and the Commission seeks comment on how it should be disclosed for gaseous and electric powered AFVs.¹⁵³

2. List of Comparative Factors

The second part of the proposed label would provide consumers with a standard framework for evaluating issues relevant to AFVs in general. Information contained on this part could help consumers evaluate information disclosed on other labels, in advertising, and from other sources. The Commission has tentatively determined that requiring disclosure of a list of issues relevant to AFVs in general will help consumers make choices and comparisons. The Commission also expects that this aspect of its labeling requirement will encourage AFV manufacturers, converters, and dealers to provide additional information to meet consumers' expectations and needs.¹⁵⁴

The AFV label would contain a form notice stating, in substance, that vehicles powered by different fuels have different costs and benefits, and that consumers should consider those differences when considering an AFV purchase. The label would then list factors consumers should consider before purchasing an AFV.¹⁵⁵ Based on

the comments received, the Commission proposes that the second part of the AFV label identify the following six factors: fuel type (i.e., the fuel or fuels that power the vehicle); operating costs; environmental impact; health and safety; on-road performance (i.e., cruising range, cold start capability and refueling time); and fuel availability.

Each factor would be supplemented with a brief explanation of how it is relevant to an AFV purchase. For example, for fuel type, the label would contain a statement that AFVs are designed to be powered by a certain fuel or fuels, and that consumers should be aware of which fuel(s) powers that particular AFV. For operating costs, the label would state that the total cost of operating an AFV includes, among other things, fuel and maintenance costs, and that those costs for AFVs are different than for gasoline-fueled vehicles and can vary considerably. The label would also advise consumers that if the vehicle posts an EPA alternative fuel-economy rating ("AFER"),¹⁵⁶ they can estimate their fuel costs per mile by dividing their fuel cost (obtained from alternative fuel retailers) by the AFER.

For environmental impact, the labels would state that all vehicles (conventional and AFVs) affect the environment in ways both direct (e.g., how the vehicle processes the fuel) and indirect (e.g., how the fuel is produced and brought to market). Accordingly, in evaluating the environmental impact of a particular AFV, consumers should consider all environmental costs associated with driving a vehicle powered by that alternative fuel, as well as any benefits as compared to gasoline.

The other factors would follow a similar format. For health and safety, the labels would notify consumers that different fuels raise different health and safety concerns. As a result, consumers should consider any health and safety issues associated with normal driving and refueling, and in the event of an accident. For on-road performance, the labels would advise consumers that vehicles powered by different fuels will differ in terms of their cruising range (i.e., how many miles the vehicle will go on a full supply of fuel), cold start capabilities (i.e., ability to start a cold engine) and refueling and/or recharging time (i.e., how long it will take to refill the vehicle's fuel tank to full capacity).

provides consumers with a framework for evaluating and comparing warranty coverage and counteracts dealer misrepresentations).

¹⁵⁶ As noted previously, for dual fueled vehicles, EPA's proposed regulations would give manufacturers the option of posting fuel economy data for the alternative fuel. See note 149 and accompanying text.

For fuel availability, the labels would advise consumers to determine whether a refueling and/or recharging infrastructure has been developed for the AFV under consideration which meets their driving needs.

3. Direction to Other Sources of Information

The third part of the proposed label would direct consumers to additional sources of objective information regarding AFVs. Several comments stated that information not required to be disclosed by the Commission would be available to consumers in DOE's information package.¹⁵⁷ However, EPA 92 does not require AFV dealers or conversion companies to provide consumers with copies of the DOE information package or to notify them of its availability. Accordingly, the third part of the proposed label would contain a statement informing consumers that further information about alternative fuels and AFVs is available from DOE.¹⁵⁸

4. Label Size

With respect to label size, the Commission has tentatively determined that a label larger than the fuel pump label is needed to accommodate the greater number of required disclosures. Accordingly, the Commission proposes requiring that AFV labels be 7½ inches wide by 11 inches high. This is the same size as the labels required by the Commission's Used Car Rule, which have adequate room to display effectively a large amount of information.¹⁵⁹

IV. Invitation to Comment

The Commission invites interested persons to address any questions of fact, law, or policy that they believe may bear upon the proposed rule. The Commission particularly desires comment, however, on the questions listed below.

All comments should reference the aspect of the proposed rule or question being discussed. Comments opposing the proposed rule or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and

¹⁵⁷ See AAMA, D-3, 2; Ford, D-10, 2; GM, D-12, 1.

¹⁵⁸ See ETC, D-14, 8 (labels could include cross-references to availability of DOE brochures); Minnesota, E-8, 3 (brochures with general consumer information, including phone numbers of additional information resources, could be made available at the point of purchase).

¹⁵⁹ Labels required by the Used Car Rule are no smaller than 11 inches high by 7¼ inches wide in black type on a white background. 16 CFR 455.2(a)(2).

¹⁵¹ See notes 74 and 102, and accompanying text. Several comments stated that related considerations (e.g., fuel tank capacity and refueling time) are important in their own right. See notes 72, 73, 79, and 105 and accompanying text.

¹⁵² For AFVs with EPA fuel economy labels, cruising range can be estimated by multiplying fuel tank capacity by the posted miles-per-gallon rating for that vehicle.

¹⁵³ For AFVs capable of operating on both alternative and conventional fuels, the labels would disclose the capacity of the tank or battery storing the alternative fuel. For AFVs capable of operating on multiple alternative fuels, the labels would disclose the capacity of the tank or battery storing each alternative fuel.

¹⁵⁴ See Boston Edison, D-11, 13 ("market forces will create incentives for sellers to identify and respond to consumer demands for information").

¹⁵⁵ In an unrelated context, the Commission has previously concluded that a list of purchasing considerations could convey useful information to consumers. See Used Motor Vehicle Trade Regulation Rule, Statement of Basis and Purpose, 49 FR 45692, 45706, Nov. 19, 1984 (list of major defects that can occur in used motor vehicles

data explaining why the alternative would better serve the purposes of EPA 92 and section 406(a).

Before adopting a final rule, consideration will be given to any written comments timely submitted to the Commission. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act¹⁶⁰ and the Commission's Rule of Practice,¹⁶¹ during normal business days from 8:30 a.m. to 5 p.m., at the Public Reference Room, room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC 20580.

A. Proposed Labeling Rule

1. Alternative Fuel Labeling

The Commission is proposing that retailers of non-liquid alternative fuels post standard labels identifying the commonly used names of those fuels on fuel dispensers and on recharging stations selling to consumers.

(a) Should the Commission issue its proposal for labeling of non-liquid alternative fuels as a final rule? If yes, why; if no, why not?

(b) What are the advantages of the Commission's proposal?

(c) What costs or problems are associated with the Commission's proposal? How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(d) Would any disclosures specified by law (either federal, state, or local) affect the Commission's alternative-fuels labeling proposal?

(e) Should the Commission require any additional or alternative disclosures, or variations on the proposed disclosures?

(1) If yes: (a) Why? (b) What should be disclosed? (c) Are there any adequate, generally accepted standards upon which to base those disclosures? (d) What are those standards? (e) What costs or problems are associated with this option? (f) How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

The Fuel Rating Rule requires that the standard labels for liquid alternative fuels identify the amount of the fuel's principal component, and permits disclosure of other components, expressed as minimum percentages by volume. The Commission is proposing this requirement for non-liquid alternative fuels.

(f) Should the Commission require disclosure of the principal component of the non-liquid alternative fuels, and permit disclosure of other components, expressed as minimum percentages?

(1) If yes: (a) Why? (b) What are the benefits of such a requirement? (c) What are the principal components of each of the non-liquid alternative fuels? (d) Do the compositions of the non-liquid alternative fuels vary from supplier to supplier? (e) How should information about those components be calculated and displayed? (f) What costs or problems are associated with requiring such a disclosure? (g) How might the Commission minimize any such costs or problems, while maintaining the benefits?

(2) If no: (a) Why not? (b) Is disclosure of a different measure of content more appropriate (e.g., requiring disclosure of voltage for electricity)? (c) What should that disclosure be, and why?

(g) Should the Commission require any additional or alternative disclosures, or variations on the proposed disclosures?

(1) If yes: (a) Why? (b) What should be disclosed? (c) Are there any adequate, generally accepted standards upon which to base those disclosures? (d) What are those standards? (e) What costs or problems are associated with this option? (f) How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

The Commission proposes that the labels for the non-liquid alternative fuels follow the same size and format required by the Fuel Rating Rule for liquid alternative fuels.

(h) Should the Commission require the same size and format in its labeling for non-liquid alternative fuels as required by the Fuel Rating Rule for liquid alternative fuels?

The Commission proposes that labeling requirements for alternative fuels become effective 90 days after publication of a final rule in the *Federal Register*.

(i) Does the proposed effective date allow affected interests sufficient time to comply with the proposed requirements?

(1) If yes, why?

(2) If no: (a) Why not? (b) How much extra time would be necessary to comply with the proposed labeling requirements for alternative fuels? Why is that extra time necessary?

2. AFV Labeling

The Commission proposes that OEMs and AFV conversion companies selling or offering to sell AFVs to consumers

affix, and that dealers maintain, standard labels on the vehicles disclosing that particular AFV's fuel tank capacity, a list of issues relevant to AFVs in general, and a statement informing consumers that further information about alternative fuels and AFVs is available from DOE.

(a) Should the Commission issue its proposal for AFV labeling as a final rule? If yes, why; if no, why not?

(b) What are the advantages of the Commission's proposal?

(c) What costs or problems are associated with the Commission's proposal? How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(d) Would any disclosures specified by law (either federal, state, or local) affect the Commission's AFV labeling proposal?

(e) Is fuel tank capacity a useful measure for consumer comparisons?

(1) If yes: (a) Why? (b) Will this information be provided by OEMs and AFV conversion companies in the absence of a regulatory requirement? (c) Will disclosure of fuel tank capacity help consumers calculate or estimate cruising range or any other important purchasing criteria? If so, which purchasing criteria? (d) Is measuring fuel tank capacity in gallons appropriate for AFVs powered by liquid fuels? (e) How should fuel tank capacity be measured for AFVs powered by gaseous fuels or electricity?

(2) If no, why not?

(f) Is a list of six issues relevant to AFVs in general on the AFV label sufficient to alert consumers to issues they should consider before purchasing an AFV?

(1) If yes: (a) Why? (b) Should the factors include the types of statements the Commission outlined for each factor in Part III(B)(2)?

(2) If no, why not?

(g) Should the AFV label notify consumers of the availability of DOE's information package? Why or why not?

(h) Should the Commission require any additional or alternative disclosures, or variations on the proposed disclosures?

(1) If yes: (a) Why? (b) What should be disclosed? (c) Are there any adequate, generally accepted standards upon which to base those disclosures? (d) What are those standards? (e) What costs or problems are associated with this option? (f) How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

¹⁶⁰ 5 U.S.C. 552.

¹⁶¹ 16 CFR 4.11.

The Commission proposes that the term "consumer" be defined as a person (i.e., an individual, corporation, or any other business organization) purchasing a new AFV from a dealer or AFV conversion company (i.e., not directly from the manufacturer as a special order).

(i) Is the Commission's proposed definition of "consumer" consistent with section 406(a)'s mandate and purpose?

(1) If yes, why?

(2) If no: (a) Why not? (b) How should the definition be modified to reflect more accurately section 406(a)'s mandate and purpose? (c) Should the Commission exclude used AFV purchases from the scope of the proposed rule? Why or why not?

The Commission proposes that the labels for AFVs be of the same size and format as the labels required by the Commission's Used Car Rule.

(j) Should the Commission require the same size label in its AFV labeling as required by the Commission's Used Car Rule?

(k) Should the Commission specify other format issues, such as layout and type size?

The Commission proposes that AFV labeling requirements become effective 90 days after publication of a final rule in the *Federal Register*.

(l) Does the proposed effective date allow affected interests sufficient time to comply with the proposed requirements?

(1) If yes, why?

(2) If no: (a) Why not? (b) How much extra time would be necessary to comply with the proposed requirements? Why is that extra time necessary?

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")¹⁶² requires agencies to prepare regulatory flexibility analyses when publishing proposed rules¹⁶³ unless the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."¹⁶⁴ Here, the economic impact of both proposed requirements appears to be *de minimis*; the Commission proposes no recordkeeping requirements,¹⁶⁵ and the proposed disclosures consist of information that is basic and easily ascertainable. The

¹⁶² 5 U.S.C. 601-612.

¹⁶³ 5 U.S.C. 603(a).

¹⁶⁴ 5 U.S.C. 605(b).

¹⁶⁵ In 1993 the Commission certified that the Fuel Rating Rule's requirements that retailers post labels and keep required records would not have a significant impact. 58 FR 41356, 41371, Aug. 3, 1993.

Commission tentatively concludes that the proposed rule also will not affect a substantial number of small entities because information the Commission currently possesses indicates that relatively few companies currently sell alternative fuels or manufacture, convert, or sell AFVs. Of those that manufacture or sell AFVs, most are not "small entit[ies]" as that term is defined either in section 601 of RFA¹⁶⁶ or applicable regulations of the Small Business Administration.¹⁶⁷

In light of the above, the Commission certifies that the proposed rule would not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, that a regulatory analysis is not necessary. The Commission requests comment on this certification, and whether the proposed rule will have a significant impact on a substantial number of small entities. After reviewing any comments received on this subject, the Commission will decide whether the preparation of a final regulatory-flexibility analysis is appropriate.

C. Regulatory Review

The Commission has implemented a program to review all of its current and proposed rules and guides. One purpose of the review is to minimize the economic impact of new regulatory actions. As part of that overall regulatory review, the Commission solicits comments on the following questions:

1. What changes, if any, should be made to the Proposed Rule to increase the benefits of the Rule to purchasers?

a. How would these changes affect the costs the Proposed Rule would impose on firms subject to its requirements?

2. What significant burdens or costs, including costs of compliance, will the Proposed Rule impose on firms subject to its requirements?

a. Will the Proposed Rule provide benefits to such firms?

3. What changes, if any, should be made to the Proposed Rule to reduce the burdens or costs that would be imposed on firms subject to its requirements?

a. How would these changes affect the benefits provided by the Proposed Rule?

D. Paperwork Reduction Act

If promulgated, the Commission's labeling requirements would not involve the "collection of information" as defined by the regulations of the Office of Management and Budget ("OMB")¹⁶⁸ implementing the

¹⁶⁶ 5 U.S.C. 601(6).

¹⁶⁷ 13 CFR Part 121.

¹⁶⁸ 5 CFR 1320.7(c).

Paperwork Reduction Act ("PRA").¹⁶⁹ Because the Commission's proposed rule contains disclosure requirements only, there is no "information collection" in this proceeding to submit to OMB for clearance. However, to ensure the accuracy of its conclusion, the Commission solicits comment on any paperwork burden that the public believes the proposed requirements may impose.

E. Metric Usage

The metric measurement system is the preferred system of weights and measures for United States trade and commerce.¹⁷⁰ Federal law requires federal agencies to use the metric measurement system in all procurements, grants and other business-related activities (including rulemakings), except to the extent that such use is impractical or likely to cause significant inefficiencies or loss of markets to United States firms.¹⁷¹ The Commission has identified one section of the proposed rule with a potential for use of metric terms. Specifically, the Commission is proposing that AFV labels disclose fuel tank capacity in gallons. The Commission seeks comment on whether to require metric or dual (i.e., metric and non-metric) units for this disclosure.

F. Public Participation

1. Public Workshop-Conference

The Commission's staff will conduct a Public Workshop-Conference to discuss written comments received in response to this Notice of Proposed Rulemaking. The purpose of the conference is to afford Commission staff and interested parties an opportunity to discuss and explore issues raised in the rulemaking proceeding, and, in particular, to examine publicly areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus of opinion among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. Commission staff will consider the views and suggestions made during the conference, in conjunction with its consideration of the written comments, in formulating its final recommendation to the Commission concerning the proposed rule.

¹⁶⁹ 44 U.S.C. 3501-3520.

¹⁷⁰ 15 U.S.C. 205b. See also Exec. Order No. 12,770, 56 FR 35801, July 21, 1991 (implementing section 205b).

¹⁷¹ *Id.*

Persons interested in participating in the Public Workshop-Conference must notify Commission staff by June 8, 1994 (the "Public Workshop notification date") as directed under the heading ADDRESSES, above. Commission staff will select a limited number of parties from among those who submit both requests to participate and written comments to represent significant interests affected by the proposed rule. These parties will participate in an open discussion of the issues. The selected parties may ask and answer questions based on their respective comments. In addition, the conference will be open to the general public. Members of the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the rulemaking proceeding. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

If the number of parties who request to participate in the Public Workshop-Conference is so large that it would inhibit effective discussion among the participants, then Commission staff will select as the participants a limited number of parties to represent the interests of those who submit written comments. The selections will be made on the basis of the following criteria:

1. The party submits a written comment by the comment due date.
2. The party notifies Commission staff of its interest and authorization to represent an affected interest by the Public Workshop notification date.
3. The party's attendance would promote a balance of interests being represented at the conference.
4. The party's attendance would promote the consideration and discussion of the issues presented in the rulemaking proceeding.
5. The party has expertise in issues raised in the proposed rules.
6. The party adequately reflects the views of the affected interest(s) which it purports to represent.
7. The party has been designated by one or more interested parties (who timely file requests to participate and written comments) as a party who shares group interests with the designator(s).
8. The number of parties selected will not be so large as to inhibit effective discussion among them.

If they wish, commenters may designate a specific party to represent their shared

group interests in the Public Workshop-Conference.

If it is necessary to limit the number of participants, those not selected to participate, but who submit both requests to participate and written comments, will be afforded an opportunity at the end of the session to present their views during a limited time period. The time allotted for these statements will be determined on the basis of the time necessary for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements. If any person cannot complete the presentation of his or her statements in the allotted time, that person will be allowed, within one week thereafter, to file a written statement covering those relevant matters that he or she did not present orally. Except for written statements submitted under these circumstances, written submissions will not be accepted after the comment due date.

A neutral, third-party facilitator will be retained for the Public Workshop-Conference. The Public Workshop-Conference is currently scheduled to be held at the Federal Trade Commission, Pennsylvania Avenue at Sixth Street, NW., Washington, DC, on July 20-21, 1994. Prior to the conference, parties selected to participate in the Public Workshop-Conference will be provided with copies of written comments received in response to this Notice of Proposed Rulemaking. A transcript of the Public Workshop-Conference will be placed on the public record.

2. Supplemental Notice of Proposed Rulemaking

After reviewing comments received in response to this notice, the transcript of the Public Workshop-Conference, and any other properly filed submissions, the Commission will publish a supplemental notice of proposed rulemaking in which it will propose the text of a labeling rule. The public will be given an additional opportunity to comment on that supplemental notice.

3. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission. Such motions or petitions will be transmitted to a Presiding Officer. The Presiding Officer will be responsible for the orderly conduct of the proceeding and shall have all powers necessary to that end, including the authority to rule on all motions or petitions.

Applications for review of rulings by a Presiding Officer will not be

entertained by the Commission prior to its review of the entire record in the rulemaking proceeding, unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy.

V. Communications by Outside Parties or Their Advisors

Pursuant to Commission Rule of Practice 1.26(b)(5),¹⁷² communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment: Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communication and summaries of any oral communications relating to such oral communications.

List of Subjects in 16 CFR Part 309

Alternative fuel, Alternative fueled vehicle, Labeling, Trade practices.

Authority: 42 U.S.C.A. 13232(a) (West Supp. 1993).

By direction of the Commission.

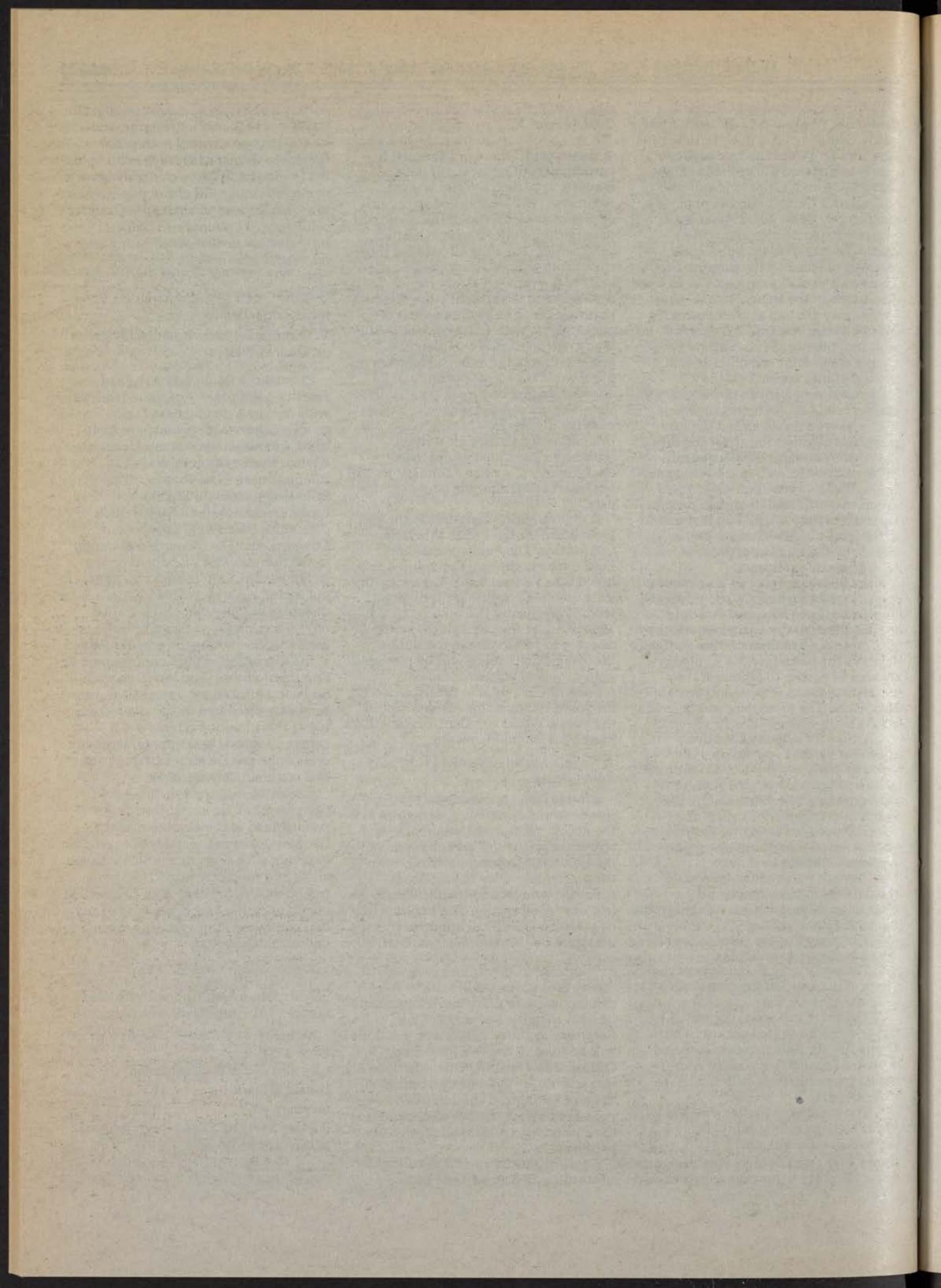
Donald S. Clark,

Secretary.

[FR Doc. 94-11102 Filed 5-6-94; 8:45 am]

BILLING CODE 6750-01-P

¹⁷² 16 CFR 1.26(b)(5).



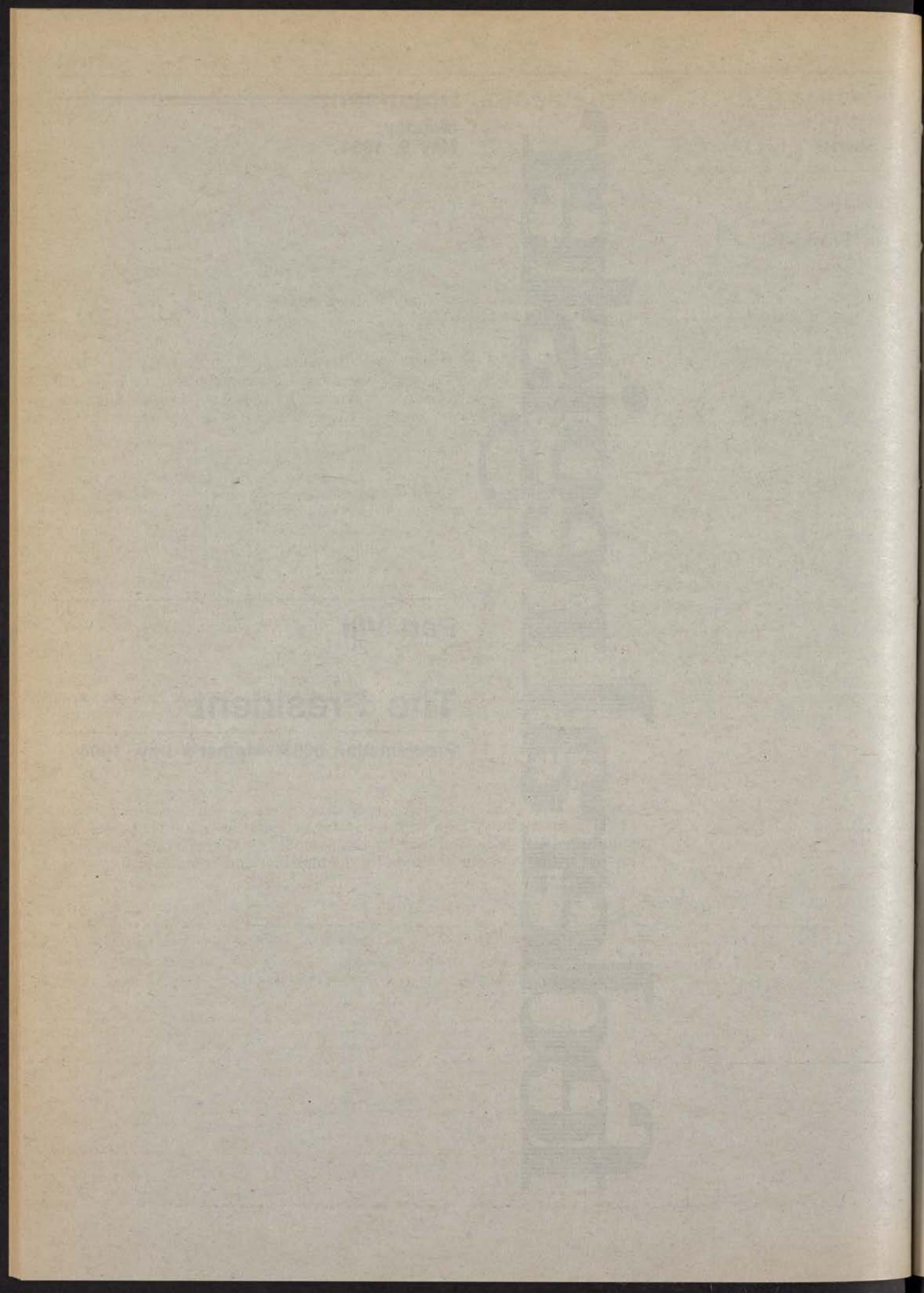
Federal registers

Monday
May 9, 1994

Part VIII

The President

Proclamation 6683—Mother's Day, 1994



Presidential Documents

Title 3—

Proclamation 6683 of May 5, 1994

The President

Mother's Day, 1994

By the President of the United States of America

A Proclamation

With the signing of the first Mother's Day Proclamation 80 years ago, President Woodrow Wilson set aside the second Sunday in May as a special time to pay tribute to America's mothers. This year I join with Americans across this great land on May 8, 1994, to honor our mothers with the appreciation and affection they so richly deserve.

Indisputably, the role of mothers has changed greatly in the last half-century. They are bread makers and breadwinners, heads of households and heads of state, caretakers of elderly parents and of newborn infants. They are also volunteers in our communities, schools, and religious organizations. Mothers find time to inspire and challenge their children to dream big dreams and to do good deeds. They provide encouragement to their children to reach for the stars and to strive for excellence. When our mothers succeed, our children succeed. When children succeed, our Nation's future is assured.

Mothers are not only our life-givers, but they are also our nurturers who sustain us with deep and unconditional love. In a world of constant change, they establish a reliable foundation of unchanging values. By instilling strong moral principles and showing concern for social improvement and well-being, mothers have used their talents, ideals, and energies to shape our families, communities, and Nation. For their abiding devotion, love, patience, and loyalty, mothers, whether biological, foster, or adoptive, hold an enduring place in our hearts. They are anchors of their American families—our Nation's most important source of strength. My own mother's courage and determination profoundly influenced me in so many ways, and she will always remain a guiding force throughout my life.

Mother's Day gives us time to pause and reflect on the manner in which mothers contribute to their families and the Nation through their hard work, dedication, and daily sacrifices. We can best observe Mother's Day by expressing our thanks and our gratitude for the blessings and bounties that motherhood holds.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Sunday, May 8, 1994, as "Mother's Day." I urge all Americans to express their love and respect for their mothers and to consider how much they have contributed to the well-being of our country. I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

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

William Clinton

[FR Doc. 94-11366

Filed 5-6-94; 11:21 am]

Billing code 3195-01-P

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1, 2 (2 Reserved)	(869-022-00001-2)	\$5.00	Jan. 1, 1994
3 (1992 Compilation and Parts 100 and 101)	(869-019-00002-0)	17.00	Jan. 1, 1993
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29 Parts:				9		13.00	³ July 1, 1984
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1926	(869-019-00114-0)	33.00	July 1, 1993	102-200	(869-019-00158-1)	11.00	⁶ July 1, 1991
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30 Parts:				42 Parts:			
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40 Parts:				2 (Parts 252-299)	(869-019-00188-3)	12.00	Oct. 1, 1993
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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

⁵ No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

⁶ No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

⁷ No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

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