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Contents

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 1994

Agency for Health Care Policy and Research
NOTICES
Meetings; advisory committees:
May, 24165–24166

Agency for Toxic Substances and Disease Registry
NOTICES
Grants and cooperative agreements; availability, etc.:
Health consultations and public health assessment activities program, 24163–24165

Agricultural Marketing Service
RULES
Commodity laboratory testing programs:
Analytical testing services; agency reorganization, 24318–24325
Honey research, promotion, and consumer information order
Correction, 24217
Milk marketing orders:
Ohio Valley et al.; correction, 24030–24031

Agriculture Department
See Agricultural Marketing Service
See Cooperative State Research Service
See Food Safety and Inspection Service

Bonneville Power Administration
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Idaho Wildlife Mitigation Projects, ID, 24127
Lower Yakima Valley Wetlands and Riparian Project, WA, 24127–24128
Pacific Northwest-Pacific Southwest Intertie; non-Federal participation Federal marketing and joint ventures record of decision; availability, 24128

Centers for Disease Control and Prevention
NOTICES
Meetings:
Vital and Health Statistics National Committee, 24166

Coast Guard
RULES
Ports and waterways safety:
Masonboro Inlet, NC; safety zone, 24048–24049
Port Canaveral, FL; security zone, 24047–24048
Vessel documentation and measurement:
Vessel rebuild standards; policy statement, 24060–
NOTICES
Committees; establishment, renewal, termination, etc.:
Houston/Galveston Navigation Safety Advisory Committee, 24209

Commerce Department
See National Oceanic and Atmospheric Administration

Cooperative State Research Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Small business innovation research program, 24316

Defense Department
See Navy Department
NOTICES
Meetings:
Ballistic Missile Defense Advisory Committee, 24124

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Noramco of Delaware, Inc., 24183–24184
Organix Inc., 24184
Roche Diagnostic Systems, Inc., 24184

Education Department
NOTICES
Agency information collection activities under OMB review, 24126
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research--
Technology-related assistance to individuals with disabilities program, 24328

Energy Department
See Bonneville Power Administration
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Advisory Board, 24126–24127
Powerplant and industrial fuel use; new electric powerplant coal capability:
Self-certification filings--
Wallkill Generating Co., L.P., 24137

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
Appliance and equipment efficiency and water standards; consumer plumbing products voluntary replacement; State and local incentive programs, 24136–24137

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
State implementation plan processing reform, 24054–24055
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
3-Dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine (Mon 13900), 24057–24059
D-limonene, 24055–24057
Methoprene, 24059–24060
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; and air quality planning purposes; designation of areas:
California, 24330–24332
Maine, 24096–24100
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Cadusafos, 24101–24103
Diethylene glycol, 24100–24101
NOTICES
Agency information collection activities under OMB review, 24137
Meetings:
Science Advisory Board, 24138
Pesticide programs:
Cornell University--
Genetically modified microbial pesticides; small-scale field testing, 24151
Pesticide registration, cancellation, etc.:
Bonide 1.00% Rotenone, etc., 24121–24151
Bonide Benomyl 50% Wp, etc., 24138–24121
Ecogen Inc. et al., 24151–24152

Executive Office of the President
See Management and Budget Office
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas, 24034–24036
Class D airspace, 24037–24039
Class E airspace, 24036–24037
PROPOSED RULES
Class E airspace, 24093–24094
Rulemaking petitions; summary and disposition, 24092
NOTICES
Exemption petitions; summary and disposition, 24209–24210
Passenger facility charges; applications, etc.:
Miami International Airport, FL, 24211–24212
Muscle Shoals Regional Airport Authority, AL, et al., 24210–24211
Tupelo Municipal Airport, MS, 24212

Federal Communications Commission
PROPOSED RULES
Practice and procedure:
North American Numbering Plan and other numbering issues; administration, 24103–24104
NOTICES
Common carrier services:
Telecommunications relay services, 24152–24157
Rulemaking proceedings; petitions filed, granted, denied, etc., 24157

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Tennessee, 24157
Texas, 24157
Hotel and Motel Fire Safety Act; national master list, 24266–24274

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Lower Village Water Power Associates, 24128
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings--
Oklahoma Corporation Commission, 24128
Applications, hearings, determinations, etc.:
All American Pipeline Co., 24128–24129
Arkla Energy Resources Co., 24129
Columbia Gulf Transmission Co., 24129–24130
Granite State Gas Transmission, Inc., 24130
Illinois Power Co., 24130–24133
National Fuel Gas Supply Corp., 24133–24134
Panhandle Eastern Pipe Line Co., 24134
Tennessee Gas Pipeline Co., 24134–24135
Texas Gas Transmission Corp., 24135
Transwestern Pipeline Co., 24135
Viking Gas Transmission Co., 24135–24136

Federal Reserve System
RULES
Truth in Savings (Regulation DD):
Preemption determinations--
Wisconsin, 24032–24034
NOTICES
Meetings; Sunshine Act, 24214
Applications, hearings, determinations, etc.:
Compass Bancorp et al., 24158
Garrett Bancshares, Ltd., et al., 24158
J.P. Morgan & Co. Inc.; correction, 24158–24159
Norwest Corp., 24159

Federal Trade Commission
NOTICES
Fair Debt Collection Practices Act; State exemption applications:
Maine, 24159–24163

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
2 percent Treasury bonds, REA series; CFR Part removed, 24047

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Findings on petitions, etc., 24117–24118
Golden paintbrush, 24106–24112
Mount Hermon June beetle, etc. (three insects from Santa Cruz Mountains, CA), 24112–24117
NOTICES
Meetings:
Klamath Fishery Management Council, 24179

Food and Drug Administration
RULES
Food for human consumption:
Food labeling--
Dietary supplements of vitamins, minerals, herbs, etc.; nutrient content claims; correction, 24039
Nutrient content claims; "healthy" definition, 24232–24250
NOTICES
Food additive petitions:
Kemin Industries, Inc., 24166
Meetings:
Advisory committees, panels, etc., 24166–24167
Pesticide residue monitoring data base (1992 FY); availability, 24167

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Nutrition labeling--

Use of ≥healthy≥ and similar terms, 24220–24229
NOTICES
Meetings:
Meat and Poultry Inspection National Advisory Committee, 24120

Health and Human Services Department
See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service

Health Care Financing Administration
NOTICES
Medicare and Medicaid programs:
Coverage data bank requirements; preliminary guidance, 24167–24170

Health Resources and Services Administration
See Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Healthy schools, healthy communities initiative, 24171–24174
Maternal and child health community integrated service systems set-aside program, 24174

Housing and Urban Development Department
RULES
Community facilities:
Supportive housing, shelter plus care, and moderate rehabilitation single room occupancy program for homeless; amendments, 24252–24254
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless assistance, 24255–24264

Immigration and Naturalization Service
RULES
Immigration:
Replenishment agricultural worker program; CFR Part removed, 24031–24032

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Arbitrage restrictions on tax exempt bonds, 24039–24046
PROPOSED RULES
Employment taxes and collection of income taxes at source:
Taxpayer identification number (TIN) matching program; cross-reference
Hearing cancellation, 24096
Income taxes:
Accuracy-related penalty imposition
Hearing, 24095–24096
Arbitrage restrictions on tax exempt bonds, 24094–24095

International Trade Commission
NOTICES
Import investigations:
Aramid fiber formed of poly para-phenylene terephthalamide from--
Netherlands, 24181
Steel wire rod from--
Canada, 24181

Interstate Commerce Commission
NOTICES
Rail carriers:
Waybill data; release for use, 24183
Railroad operation, acquisition, construction, etc.:
Grand Trunk Western Railroad Inc. et al., 24181–24182
Minnesota Transportation Museum, Inc., 24182
Wisconsin Central Ltd., 24183
Railroad services abandonment:
Norfolk & Western Railway Co. et al., 24182–24183
Union Pacific Railroad Co., 24183

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service

Land Management Bureau
NOTICES
Withdrawal and reservation of lands:
Utah, 24178–24179

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 24214–24216

Management and Budget Office
NOTICES
Regulatory planning and review; report on Executive Order No. 12866, 24276–24313

Minerals Management Service
NOTICES
Royalty management:
Royalty-in-Kind (RIK) program; royalty oil availability to small refiners and sale of government royalty oil; correction, 24217

National Aeronautics and Space Administration
PROPOSED RULES
Acquisition regulations:
Procurement plans, technical and business management proposal instructions, and prenegotiation position, 24104–24106

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 24216

National Institutes of Health
NOTICES
Meetings:
National Institute of General Medical Sciences, 24175–24176
National Institute of Nursing Research, 24175
National Institute on Aging, 24176
National Library of Medicine, 24174–24175
Patent licenses; non-exclusive, exclusive, or partially exclusive:
U.S. Bioscience, Inc., 24176–24178

Regulations review plan, 24178

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Northeast multispecies, 24118–24119
NOTICES
Grants and cooperative agreements; availability, etc.:
Monterey Bay and Gray's Reef National Marine Sanctuaries site characterizations, 24120–24124

National Park Service
NOTICES
Meetings:
Delta Region Preservation Commission, 24179–24180
Upper Delaware Citizens Advisory Council, 24180
National Register of Historic Places:
Pending nominations, 24180–24181

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure--
Naval Air Station Pensacola, FL, 24124–24125
Naval Air Station Miramar, CA; landfill general development plan, etc., 24125
San Diego Bay, CA; dredged material disposal, 24125–24126

Nuclear Regulatory Commission
PROPOSED RULES
Fee schedules; revision
100% fee recovery (1994 FY), 24065–24092
NOTICES
Low-level radioactive waste disposal facilities; revisions to standard review plan for license application review, 24184–24185
Meetings; Sunshine Act, 24216
Regulatory guides; issuance, availability, and withdrawal, 24185
Applications, hearings, determinations, etc.:
Entergy Operations, Inc.; correction, 24185
Southern California Edison Co., 24185–24187

Nuclear Waste Technical Review Board
NOTICES
Meetings, 24187

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
RULES
Health benefits, Federal employees:
Payment claims for service or supplies furnished by debarred providers, 24030
Pay under General Schedule:
Within-grade increases, 24029–24030
PROPOSED RULES
Health benefits, Federal employees:
Miscellaneous amendments, 24062–24065 Presidential Documents
PROCLAMATIONS
Haiti suspension of admission of certain refugees into U.S. (Proc. 6685), 24337–24338
Special observances:
Walking Week, National (Proc. 6684), 24335–24336
EXECUTIVE ORDERS
Haiti; prohibition of certain transactions (EO 12914), 24339–243340
ADMINISTRATIVE ORDERS
Native American religious ceremonies; facilitation of collection and distribution of eagle body parts and feathers by Federal Government (Memorandum of April 29, 1994) [EDITORIAL NOTE: This document, appearing at page 22953 in the FEDERAL REGISTER of May 4, 1994 was not included in that issue's table of contents.]

Public Health Service
See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
National toxicology program:
Annual report (1992 FY); availability, 24163–24165

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 24187–24188
Chicago Stock Exchange, Inc., 24188
Cincinnati Stock Exchange, Inc., 24188–24189
Pacific Stock Exchange, Inc., 24189
Philadelphia Stock Exchange, Inc., 24189–24190
Applications, hearings, determinations, etc.:
Bull & Bear Financial News Composite Fund, Inc., 24190
Nuveen Select Tax-Free Income Portfolio 5, 24191
Travelers Insurance Co. et al., 24191–24193

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 24193

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

Trade Representative, Office of United States
NOTICES
Committees; establishment, renewal, termination, etc.:
Trade and Environment Policy Advisory Committee, 24213
Meetings:
Trade Policy and Negotiations Advisory Committee et al., 24213

Transportation Department
See Coast Guard
See Federal Aviation Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 24194
Grants and cooperative agreements; availability, etc.:
Regional liaison outreach and services program, 24194–24209

Treasury Department
See Fiscal Service

See Internal Revenue Service

United States Information Agency
NOTICES
Meetings:
Public Diplomacy, U.S. Advisory Commission, 24120

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 24216

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Montgomery GI Bill-Active Duty; eligibility, 24049–24050
Veterans education--
Montgomery GI Bill-Active Duty; eligibility, 24050–24054
NOTICES
Loan guaranty:
Percentage to determine net value, 24213

Separate Parts In This Issue

Part II
Department of Agriculture, Food Safety and Inspection Service, 24220–24229

Part III
Department of Health and Human Services, Food and Drug Administration, 24232–24250

Part IV
Department of Housing and Urban Development, 24252–24264

Part V
Federal Emergency Management Agency, 24266–24274

Part VI
Office of Management and Budget, 24276–24313

Part VII
Department of Agriculture, Cooperative State Research Service, 24316

Part VIII
Department of Agriculture, Agricultural Marketing Service, 24318–24325

Part IX
Department of Education, 24328

Part X
Environmental Protection Agency, 24330–24332

Part XI
The President, 24333–24340

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
6569 (Rvoked by Proc. 6685) 24337
6684 24335
6685 24337
Executive Orders:
12779 (See EO 12914) 24339
12914 24339

5 CFR
531 24029
890 24030
Proposed Rules:
890 24062

7 CFR
58 24318
91 24318
93 24318
94 24318
95 24318
98 24318
1033 24030
1036 24030
1049 24030
1240 24217

8 CFR
210a 24031

9 CFR
317 24220
381 24220

10 CFR
Proposed Rules:
170 24065
171 24065

12 CFR
230 24032

14 CFR
39 24034
71 (3 documents) 24036, 24037, 24038
Proposed Rules:
Chapter I 24092
71 24093

21 CFR
101 (2 documents) 24039, 24232

24 CFR
582 24252
583 24252
882 24252

26 CFR
1 24039
602 24039
Proposed Rules:
1 (2 documents) 24094, 24095
31 24096

31 CFR
347 24047

33 CFR
165 (2 documents) 24047, 24048

38 CFR
21 (2 documents) 24049, 24050

40 CFR
52 24054
180 (3 documents) 24055, 24057, 24059
185 24059
186 24059
Proposed Rules:
52 (2 documents) 24096, 24330
81 24330
180 (2 documents) 24100, 24101

46 CFR
67 24060

47 CFR
Proposed Rules:
1 24103

48 CFR
Proposed Rules:
1807 24104
1815 24104

50 CFR
Proposed Rules:
17 (3 documents) 24106, 24112, 24117
651 24118

Rules and Regulations

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AG04

Pay Under the General Schedule; Within-Grade Increases

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is revising a regulation relating to interim relief provisions authorized under the Whistleblower Protection Act of 1989. The existing regulations on interim within-grade increases are being modified to provide that an interim within-grade increase must be made effective on the date of the appellate decision ordering interim relief.

DATES: These interim regulations were effective on March 2, 1992. Comments must be submitted on or before July 11, 1994.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Acting Assistant Director for Compensation Policy, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James Weddel, (202) 606–2858.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) published final regulations on interim relief under the Whistleblower Protection Act of 1989 (WPA) (5 U.S.C. 7701(b)(2)(A)) in the **Federal Register** on January 31, 1992 (57 FR 3707). The requirements for interim within-grade increases in 5 CFR 531.414(b) provide that "an interim within-grade increase granted under paragraph (a) of this section shall become effective on the first day of the first pay period beginning on or after the date of the favorable within-grade increase determination."

However, the U.S. Merit Systems Protection Board (MSPB) issued a decision on December 22, 1993 (*Andrew W. Harrell* v. *Department of the Army*, AT–531D–93–0559–I–1), which stated that "OPM's provision contradicts the express language of 5 U.S.C. 7701(b)(2)(A), which states that 'the employee or applicant shall be granted the relief provided in the decision *effective upon the making of the decision*' (emphasis added). Accordingly, we find that the agency has failed to provide evidence of complete relief, as ordered, and dismiss the agency's petition for review."

OPM's final regulation on the effective date of an interim within-grade increase was intended to carry out the purpose of the statute without creating an undue administrative burden for agencies and to be consistent with longstanding requirements governing the effective date of within-grade increases. OPM believed the regulation was consistent with the spirit and purpose of the WPA. While we are not persuaded that this regulation is inconsistent with the spirit and purpose of the WPA, we recognize that the interpretation reflected in MSPB's recent decision is a plausible reading of the law. Further, we do not wish to create undue difficulty for agencies that are required to provide interim relief under the WPA. Therefore, upon reconsideration, we have determined that the effective date of an interim within-grade increase must be the date of the appellate decision ordering interim relief under 5 U.S.C. 7701(b)(2)(A).

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective in less than 30 days. This regulation is being made effective on March 2, 1992, the effective date of the final regulations on interim relief (57 FR 3707), in order to be consistent with an interpretation of law in a decision of the U.S. Merit Systems Protection Board (*Andrew W. Harrell* v. *Department of the Army*, AT–531D–93–0559–I–1, December 22, 1993).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR part 531

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending part 531 of title 5, Code of Federal Regulations, as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of the Performance Management and Recognition System Termination Act of 1993, 107 Stat. 981; E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991 Comp., p. 316;

Subpart A also issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), 104 Stat. 1462, 5 U.S.C. 5304, 5305, and 5553, and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under section 404 of FEPCA, 104 Stat. 1466, section 3(7) of Pub. L. 102–378 (October 2, 1992), section 302 of FEPCA, 104 Stat. 1462, and 5 U.S.C. 5304, 5305, and 5553;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553, and E.O. 12883, 58 FR 63281, November 29, 1993, 3 CFR, 1993 Comp., p. 682.

Subpart D—Within-Grade Increases

3. In § 531.412, paragraph (a) is revised to read as follows:

§ 531.412 Effective date of within-grade increase.

(a) Except as provided in paragraph (b) of this section, a within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility. Interim within-grade increases shall become effective as provided in § 541.414(b).

* * * * *

3. In § 531.414, paragraph (b) is revised to read as follows:

§ 531.414 Interim within-grade increase.

* * * * *

(b) An interim within-grade increase granted under paragraph (a) of this section shall become effective on the date of the appellate decision ordering interim relief under 5 U.S.C. 7701(b)(2)(A).

* * * * *

[FR Doc. 94-11163 Filed 5-9-94; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 890

RIN 3206-AG03

Federal Employees Health Benefits Program: Debarment

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to incorporate into regulations the statutory requirement that carriers in the Federal Employees Health Benefits (FEHB) Program may not deny claims for services or supplies due to the debarment of the providers who supplied them if the claimants could not have known that the provider was debarred. The purpose of these regulations is to comply with the provision of law that requires OPM to prescribe regulations on this issue.

DATES: These interim regulations are effective June 9, 1994. Comments must be received on or before July 11, 1994.

ADDRESSES: Written comments may be sent to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 3415, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Sears (202) 606-0191.

SUPPLEMENTARY INFORMATION: On October 30, 1989, OPM published interim regulations in the **Federal Register** (54 FR 43939) implementing title I of Public Law 100-654, which allowed OPM to exclude from further participation in the FEHB Program any health care provider (1) convicted of fraud or various other cited examples of unethical professional conduct, or (2) determined by OPM to have committed various cited offenses against the FEHB Program.

Public Law 100-654 contained a provision requiring OPM to prescribe regulations allowing payment of claims for service or supplies furnished by debarred providers if the claimant could not reasonably have known of the debarment. This issue was inadvertently not addressed by the regulations published October 30, 1989. Therefore, in compliance with the requirements of 5 U.S.C. 8902a(i) OPM is now issuing these interim regulations.

Under these interim regulations, carriers cannot deny claims based on debarment if there was no reasonably way the claimant could have known that the provider was debarred. When an individual who has not previously been notified of a provider's debarment, submits a claim for services or supplies furnished by a debarred provider, the carrier must (1) honor the claim under the terms of its contract with OPM, and (2) inform the individual about the debarment of the provider and the minimum period of time remaining under the terms of the debarment.

In practical terms, this generally means that the first claim(s) an enrollee submits for services or supplies received after a provider has been debarred, but before the enrollee has been informed of the debarment, is (are) paid to the same extent it (they) would have been paid had the provider not been debarred. The carrier must, at the same time, inform the enrollee concerning the debarment. The carrier will deny any subsequent claims for service or supplies furnished during the period the provider is debarred.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. code, I find that good cause exists for waiving the general notice of rulemaking because this regulation primarily affects Federal employees and annuitants and merely incorporates statutory requirements into regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal employees and annuitants.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101-513, 104 Stat. 2064.

2. In subpart J, a new § 890.1006 is added to read as follows:

§ 890.1006 Payment of claims for service or supplies furnished by debarred providers.

Health plans may not deny claims for services or supplies based on debarment of the provider under this subpart if the claimant did not know or could not reasonably be expected to have known of the debarment. In any such instance, the carrier involved must take appropriate measures to ensure that the individual is informed of the debarment and the minimum period of time remaining under the terms of the debarment.

[FR Doc. 94-11164 Filed 5-9-94; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1033, 1036 and 1049

[Docket Nos. AO-166-A61; AO-179-A56; and AO-319-A39; DA-90-015; Docket Nos. AO-166-A62-RO2; AO-179-A57-RO2; and AO-319-A40-RO2; DA-91-013]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Marketing Areas; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations which were published Tuesday, August 17, 1993 (58 FR 43504), and Wednesday, December 1, 1993 (58 FR 63283). The final rules amended the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana Federal milk marketing orders on the basis of evidence received at a hearing held in August 1990 to consider a multiple component pricing plan for the three orders, and at two hearings held in 1991 and 1992 to consider Class III-A pricing under 27 orders for milk used to make nonfat dry milk. This

docket amends the orders to correct the errors.

EFFECTIVE DATE: The correcting amendments are effective December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections inadvertently omitted several paragraphs of regulatory language which should be added. These paragraphs were omitted from a final rule incorporating multiple component pricing for the three orders effective October 1, 1993, and resulted in the incorrect designation of paragraphs for these three orders included in a final rule establishing Class III–A pricing for 27 milk orders, effective December 1, 1993.

Need for Correction

As published, the final regulations do not contain language that is needed for the proper administration of the three orders.

List of Subjects in 7 CFR Parts 1033, 1036 and 1049

Milk marketing orders.

Accordingly, 7 CFR parts 1033, 1036 and 1049 are corrected by making the following correcting amendments:

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. The authority citation for part 1033 continues to read as follows:

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

2. In § 1033.60, redesignate paragraph (m) as paragraph (n), and add a new paragraph (m), to read as follows:

§ 1033.60 Computation of handlers' obligations to pool.

* * * * *

(m) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. The authority citation for part 1036 continues to read as follows:

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

2. In Section 1036.60, redesignate paragraph (m) as paragraph (n), and add a new paragraph (m), to read as follows:

§ 1036.60 Computation of handlers' obligation to pool.

* * * * *

(m) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

* * * * *

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. The authority citation for part 1049 continues to read as follows:

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

2. In § 1049.60, redesignate paragraph (l) as paragraph (m), and add a new paragraph (l), to read as follows:

§ 1049.60 Computation of handlers' obligations to pool.

* * * * *

(l) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

* * * * *

Dated: May 2, 1994.

Charles R. Brader,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 94–11006 Filed 5–9–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 210a

[INS No. 1635–93]

RIN 1115–AB05

Expiration of the Replenishment Agricultural Worker Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Immigration and Naturalization Service (Service) relating to Replenishment Agricultural Workers (RAWs) under section 210A of the Immigration and Nationality Act (Act). Specifically, this rule removes the regulations pertaining to the RAW program as the program expired at the end of Fiscal Year 1993.

EFFECTIVE DATE: May 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ronald S. Chirlin, Senior Immigration Examiner, Naturalization and Special Projects Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington DC 20536, Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION: On December 9, 1993, the Immigration and Naturalization Service (Service) published in the **Federal Register** at 58 FR 64695, a proposed rule to remove 8 CFR part 210a from the Code of Federal Regulations. Section 210A of the Immigration and Nationality Act, the Replenishment Agricultural Worker (RAW) program, was added by the Immigration Reform and Control Act of 1986, Pub. L. 99–603, dated November 6, 1986. According to section 210A(a)(1) of the Act, the RAW program was to be effective from Fiscal Year 1990 through the end of Fiscal Year 1993. The program was enacted as a means of providing additional seasonal agricultural workers to United States agricultural employers to alleviate

possible shortages of workers for perishable crops. The program allowed the government to replenish the supply of farmworkers by providing foreign workers with legal resident status if the Secretaries of Agriculture and Labor determined that a shortage of such workers existed.

In the three years during which the program was in place, however, a shortage of agricultural workers was never found to exist. Therefore, no immigration benefits were ever granted through the RAW program. As Congress gave no indication that it would extend the RAW program beyond the statutory expiration date, the Service found it appropriate to remove the regulations implementing the RAW program.

The Service received comments from two organizations as a result of the proposed rule. Both organizations supported the removal of part 210a from the Code of Federal Regulations, as the Service's authority to implement the RAW program expired on September 30, 1993. Both commenters also suggested that the Service inform all RAW registrants who contact the Service that the program has expired and that they are not eligible for work authorization under that program. The Service will ensure that all registrants who inquire about the program are informed about the program's expiration either orally or in writing, depending on the nature of the inquiry.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. Since the RAW program was never implemented because a shortage of agricultural workers was never found to exist, any adverse economic impact on small entities would be minimal, if any.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation 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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service has certified that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this rule will not have an impact on family formation, maintenance, or general well-being.

List of Subjects in 8 CFR Part 210a

Administrative practice and procedure, Aliens, Migrant labor, Reporting and recordkeeping requirements.

PART 210a—[REMOVED]

Accordingly, under the Commissioner's authority, 8 U.S.C. 1103, part 210a of chapter I of title 8 of the Code of Federal Regulations is removed.

Dated: April 25, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–11235 Filed 5–9–94; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0818]

Truth in Savings; Final Preemption Determination (Wisconsin)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final determination that Wisconsin's Truth in Savings law is not inconsistent with the federal Truth in Savings Act and Regulation DD, and therefore is not preempted.

EFFECTIVE DATE: May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Kurt Schumacher, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667; for the hearing impaired *only* contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) General

Section 273 of the Truth in Savings Act (12 U.S.C. 4312) states that the act does not supersede provisions of the law of any State relating to the disclosure of yields payable or account terms, except to the extent that those laws are inconsistent with the provisions of the federal statute, and then only to the extent of the inconsistency. The act also grants the Board the authority to determine whether any inconsistencies exist between federal and state law.

Regulation DD (12 CFR part 230), which implements the act, provides the standards for preemption determinations in appendix C. State requirements are inconsistent with, and therefore preempted by, the federal provisions if the state law requires a depository institution to make disclosures or take actions that contradict the requirements of the federal law. A state law is also inconsistent if it requires the use of the same term to represent a different amount or a different meaning than the federal law, requires the use of a term different from that required in the federal law to describe the same item, or permits a method of calculating interest on an account different from that required in the federal law.

Preemption determinations for the act are issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.9(c)(5), as amended December 15, 1993, 58 FR 65539).

(2) Discussion of Specific Request and Final Determination

The Board was asked to determine whether specific provisions of Wisconsin Statutes section 224.08 regarding disclosures for deposit accounts at banks are inconsistent with the act and Regulation DD and are therefore preempted. The Board published a proposed determination on December 14, 1993 (58 FR 65293), stating that the provisions of the Wisconsin law found in Wisconsin Statutes section 224.08 are not inconsistent with the federal Truth in Savings law, and therefore are not preempted by the federal law.

The act and Regulation DD require depository institutions to give consumers disclosures before opening a deposit account and upon a request made by a consumer. The act also sets out requirements for the payment of interest on accounts, provides rules for

account advertisements and change in terms notices, and mandates certain information to be provided on periodic statements for accounts that receive such statements. In addition, the act and Regulation DD provide for an "annual percentage yield" to aid consumers in making comparisons between the rates paid on different accounts.

Section 224.08 of the Wisconsin Statutes requires disclosure statements to be given for each account offered by a bank, setting forth the following information: a description of the account, the conditions (if any) on which the account is offered, the terms of interest offered for the account, and all fees charged for the account. The disclosure statement under state law may include a separate interest rate table or fee schedule, or both. Banks must provide this information at the time of the depositor's initial deposit into the account, upon any change in any of the information applicable to a depositor's account (other than a change in the interest rate of a variable interest rate account if the variability of the interest rate was disclosed at the time of the initial deposit), and upon request. Finally, the state law requires that the disclosure statement for an account be accompanied by a brief description of all other accounts offered by the bank and a statement that more detailed information is available on request.

The Board received three comment letters on its proposal, all opposing the Board's proposed determination and requesting that the Board preempt the Wisconsin law based on inconsistencies with the federal provisions. After careful review, the Board has made a final determination *not* to preempt the Wisconsin law for the reasons discussed below.

Coverage of Institutions

The requesting party suggested that state law is inconsistent with the act and Regulation DD because the state law covers only state-chartered banks, whereas the federal law covers *all* depository institutions, including savings associations and national banks. The Board has determined that a state law providing for more limited coverage than federal law is not inconsistent with the act, and therefore is not preempted.

Content and Format of Disclosures

The requesting party asked the Board to determine that the content of the state law disclosures is inconsistent with the federal law. The state law permits disclosures to be more general than the federal law allows—for example, by mandating only a statement of the "terms of interest offered for the account," and not requiring an "annual percentage yield" to be given, using that term. However, state law does not prohibit institutions from being more specific in fulfilling their state disclosure requirements. Therefore, the Board believes institutions can comply with the state provisions while still complying with the more detailed federal requirements.

Similarly, the requesting party suggested that preemption of the state law is warranted, based on the format of the required state disclosures because Wisconsin law requires that each account disclosure include a "brief description" of all other accounts offered by the bank along with a statement that more detailed information is available upon request. The federal law contains no similar requirement, and in fact permits an institution to combine disclosures for all of its accounts, as long as it is clear which disclosures are applicable to the consumer's account (12 CFR 230.3(a)). However, Regulation DD provides a very narrow preemption standard: preemption is appropriate only where a state law requires a depository institution to make disclosures or take actions that contradict the requirements of the federal law. The Board believes that banks are able to comply with Wisconsin law without contradicting the requirements of the federal law. Thus, preemption of the state requirement to provide information about other available accounts is not warranted.

Moreover, the Wisconsin Commissioner of Banking, the state enforcement agency for Wisconsin-chartered banks, has provided an interpretation to the Board stating that banks would comply with this provision of the Wisconsin law by providing disclosures in keeping with the federal law. The agency has stated that the "brief description" of other accounts was intended as an accommodation to banks to provide something less than full disclosures for each available account; thus, banks would not violate state law if they provide full account disclosures for all accounts offered by the institution, as federal law allows. Finally, agency officials confirmed that they would not require the statement that more detailed information is available upon request if full account disclosures are provided for all accounts in compliance with the requirements of Regulation DD.

Change in Terms Notice

The requesting party asked that the Board find the provision of the Wisconsin law requiring a change in terms notice to be inconsistent with the federal law and therefore preempted for three reasons. First, the state law requires redisclosure of all state law disclosures when any term is changed. In contrast, federal law requires notice to consumer account-holders only of the specific term being changed. Second, state law requires a change in terms notice to be sent upon any change to a depositor's account that was initially required to be disclosed (except a change in the interest rate for a variable rate account). Federal law requires such a notice only for a change that reduces the annual percentage yield or adversely affects the consumer. See § 230.5(a). Third, state law redisclosure is required upon any change in the account. Federal law generally requires a change in terms notice at least 30 days prior to the effective date of the change.

As stated above, the Board believes the state Truth in Savings law is not inconsistent simply because the state law requires more information than federal law requires, or because the state law requires disclosures in cases where the federal law is silent. A Wisconsin-chartered bank can comply with the advance change in terms notice required under federal law while providing the more detailed disclosures required by the state law. The Board notes that Regulation DD allows institutions to comply with change in terms requirements by sending new account disclosures if the changed terms are specifically brought to the consumer's attention (for example, by highlighting them in some way). Although state and federal laws have different requirements in this regard, the Board believes that they are not inconsistent, given that a bank can comply with both requirements without violating either.

Finally, the Board has determined that the state law requirement that a bank redisclose all applicable information "upon" any change in a term that was initially disclosed is not inconsistent with the federal provision requiring at least 30 days advance notice of the effective date of the change. As stated in the Board's proposed determination, State officials have indicated to the Board that institutions providing the disclosures required under state law at least 30 days in advance of the effective date of the change, as the federal provisions require, would comply with the state law. As Wisconsin banks are therefore able to comply with both the federal and state laws, the Board has determined that this provision is not preempted by the federal law.

(3) Regulatory Flexibility Analysis and Paperwork Reduction Act

The determination that State law is not preempted is not likely to have a significant impact on institutions' costs, including those of small institutions.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Deposit accounts, Interest, Interest rates, Federal Reserve System, Truth in savings.

By order of the Board of Governors of the Federal Reserve System, May 4, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–11152 Filed 5–9–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–156–AD; Amendment 39–8901; AD 94–09–12]

Airworthiness Directives; McDonnell Douglas Model DC–8, DC–9, and DC–9–80 Series Airplanes; Model MD–88 Airplanes; and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8, DC–9, and DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) airplanes; that requires inspection of the center and side windshields, and replacement of discrepant windshields. This amendment is prompted by reports that the core ply of certain windshields was incorrectly tempered during the manufacturing process. The actions specified by this AD are intended to prevent failure of the windshield.

DATES: Effective June 9, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. 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 FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Hempe, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5224; fax (310) 988–5210; or Mike Lee, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8, DC–9, and DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 15, 1994 (59 FR 7233). That action proposed to require inspection of the center and side windshields, and replacement of discrepant windshields.

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

Three commenters support the proposed rule.

One commenter requests that inspections performed prior to the effective date of the AD be considered acceptable for compliance with the inspection requirement in the proposal. The FAA concurs. As allowed by the phrase, "unless accomplished previously," in the "Compliance" section of this AD, if the inspection has been accomplished prior to the effective date of the AD, this AD does not require that it be repeated. Therefore, no change to the final rule is necessary.

One commenter requests that the final rule be revised to include the option of reviewing purchasing records in lieu of the proposed inspection requirement. The commenter asserts that a review of purchasing records would be more cost effective, and safety would not be compromised since the end result would be the same: a determination of the manufacturing source of the windshields. The FAA does not concur. Since tracking systems for shipping and purchasing records vary from operator to operator, the possibility exists for windshields to be tracked by part number alone. These common part numbers may be assigned to several manufacturers. Therefore, purchasing records would not be reliable in determining the manufacturing source of windshields.

One commenter requests that the proposed compliance time of 30 days to inspect the windshields be extended to 90 days or at the next regularly scheduled "B" check. The commenter states that a compliance time of 30 days would impose an unnecessary hardship on operators of large fleets. Two commenters also express concern that replacement parts would not be available in sufficient quantities; therefore, the extension in compliance time would give the manufacturer sufficient time to produce an adequate quantity of replacement windshields. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of inspecting and installing the necessary parts within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The FAA has verified that, of the original 730 discrepant windshields known to have been produced and in service, 599 (82%) have already been removed from service and returned to the vendor; that leaves only 131 windshields remaining in service. Further, the FAA also has verified that an adequate supply of replacement windshields will be available for affected operators to accomplish the requirements of this AD within the 30-day compliance time. In light of all of these factors, the FAA has determined that the 30-day compliance time is warranted and appropriate. However, under the provisions of paragraph (d) of the final rule, operators may apply for the approval of an alternative method of compliance or adjustment of the compliance time by submitting justification for such an alternative or adjustment to the FAA.

One commenter requests that proposed paragraphs (a)(2)(ii), (b)(2)(ii), and (c) be changed to limit applicability only to those airplanes on which the windshield has been replaced after February 1992. The FAA does not consider that this suggested change is necessary. Since the applicability statement of the AD states that the AD

applies to "airplanes on which the . . . windshield has been replaced after February 1992," that statement applies to paragraphs (a), (b), and (c) of the AD. Therefore, no change to the final rule is warranted.

This same commenter requests that the final rule be revised to include a requirement to inspect for discrepant windshields that are identifiable by part numbers and serial numbers beginning with the letters "SWU." The FAA does not concur. Windshields that have a part number or serial number beginning with "SWU" are made of acrylic and, as such, are not subject to the unsafe condition addressed by this AD. The unsafe condition addressed by this AD is the result of incorrect tempering of the core ply of certain glass windshields during the manufacturing process. NOTE 2 has been added to the final rule to make clear that the requirements of this AD apply only to windshields made of glass.

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

There are approximately 235 Model DC-8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 140 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per airplane to accomplish the required inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators of Model DC-8 series airplanes is estimated to be $3,850, or $27.50 per airplane.

There are approximately 1,978 Model DC-9 and DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,079 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per airplane to accomplish the required inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators of Model DC-9 and DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (military) airplanes is estimated to be $29,673, or $27.50 per airplane.

Based on the figures discussed above, the total cost impact of the AD actions on U.S. operators is estimated to be $33,523.

Should an inspection reveal that a discrepant windshield was installed, the replacement of that windshield will require approximately 10 additional work hours to accomplish, at an average labor rate of $55 per work hour. Required replacement parts will be provided at no cost to operators. Based on these figures, the total cost impact for the replacement of discrepant windshields for U.S. operators will be $550 per airplane.

The total cost impact figures discussed above are 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. However, the FAA has been advised that 599 out of 730 discrepant windshields already have been identified and returned by affected operators; therefore, the future total cost impact of this AD is expected to be much less than the figures indicated above.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94-09-12 McDonnell Douglas: Amendment 39-8901. Docket 93-NM-156-AD.

Applicability: Model DC-8-60 and -70 series airplanes, on which the center windshield has been replaced after February 1992; and Model DC-9-10, -20, -30, -40, and -50 series airplanes, Model DC-9-81, -82, -83, and -87 airplanes, Model MD-88 airplanes, and C-9 (military) airplanes, on which the center and/or side (glass) windshield(s) has been replaced after February 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Replacement of any subject windshield that has been accomplished prior to the effective date of this amendment in accordance with McDonnell Douglas DC-8 Service Bulletin A56-16, dated June 15, 1993, or Revision 1, dated July 1, 1993 (for Model DC-8 series airplanes); or McDonnell Douglas DC-9 Alert Service Bulletin A56-15, dated June 15, 1993, or Revision 1, dated September 15, 1993; is considered acceptable for compliance with the applicable action specified in this amendment.

Note 2: This AD only addresses center and side flight compartment windshields made of glass. Windshields used in other locations on these airplanes and windshields manufactured with materials other than glass are not addressed in this AD.

To prevent failure of the windshield, accomplish the following:

(a) For Model DC-8-60 and -70 series airplanes: Within 30 days after the effective date of this AD, perform a visual inspection of the center windshield to determine the manufacturer.

(1) If the windshield was not manufactured by Pilkington Aerospace: No further action is required by this AD.

(2) If the center windshield, part number 5887275-501, was manufactured by Pilkington Aerospace: Prior to further flight, replace the center windshield with one of the windshields specified in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD, in accordance with McDonnell Douglas DC-8 Alert Service Bulletin A56-16, Revision 2, dated December 13, 1993.

(i) A center windshield that was not manufactured by Pilkington Aerospace.

(ii) A center windshield that has been manufactured by Pilkington Aerospace, but recertified and re-identified by Pilkington Aerospace.

(iii) A center windshield that was manufactured by Pilkington Aerospace after September 30, 1993.

(b) For Model DC-9-10, -20, -30, -40, and -50 series airplanes; Model DC-9-81, -82, -83, and -87 airplanes; Model MD-88 airplanes; and C-9 (military) airplanes: Within 30 days after the effective date of this AD, perform a visual inspection of the center windshield and side windshield to determine the manufacturer.

(1) If the center and side windshields were not manufactured by Pilkington Aerospace: No further action is required by this AD.

(2) If the center windshield, part number 5887275–501, or side windshields, part numbers 5912290–501 and 5912290–502, were manufactured by Pilkington Aerospace: Prior to further flight, replace the center and/or side windshield(s) with one of the windshields specified in paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this AD, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A56–15, Revision 2, dated November 9, 1993.

(i) A center and/or side windshield(s) that was not manufactured by Pilkington Aerospace.

(ii) A center and/or side windshield(s) that has been manufactured by Pilkington Aerospace, but recertified and re-identified by Pilkington Aerospace.

(iii) A center and/or side windshield(s) that was manufactured by Pilkington Aerospace after September 30, 1993.

(c) As of the effective date of this AD, no person shall install on any airplane a center windshield, part number 5887275–501, or side windshields, part numbers 5912290–501 and 5912290–502, that have been manufactured by Pilkington Aerospace between February 1, 1992, and September 30, 1993, inclusive. Those windshields must be recertified and re-identified by Pilkington Aerospace before use.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) 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.

(f) The replacement shall be done in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A56–16, Revision 2, dated December 13, 1993; or McDonnell Douglas DC–9 Alert Service Bulletin A56–15, Revision 2, dated November 9, 1993; as applicable. 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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 9, 1994.

Issued in Renton, Washington, on April 21, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–10116 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–ANM–45]

Amendment to Class E Airspace; Twin Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Twin Falls, ID. Establishment of a new instrument approach procedure requires additional controlled airspace for the procedure. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area" replacing it with the designation "Class E airspace. The Class E airspace will be depicted on aeronautical charts for pilot reference when the new approach procedures become effective.

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

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–45, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On February 18, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace for the Twin Falls-Sun Valley Regional, Joslin Field Airport, ID (59 FR 8148). Interested parties were invited to participate in the rulemaking process by submitting such written data, views, or arguments as they desired. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the term "transition area," and certain airspace extending upward from 700 feet above ground level is now designated Class E airspace. Class E airspace designations for airspace extending upward from 700 feet above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. The coordinates in this final rule are in North America Datum 83.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class E airspace at Twin Falls, Idaho. It will provide controlled airspace for a new instrument approach procedure at the airport. Amendment of the Class E airspace will result in greater safety and efficiency at, and in the vicinity of, the airport. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM ID E5 Twin Falls, ID [Revised]

Twin Falls-Sun Valley Regional, Joslin Field, ID
(lat. 42°28'55" N, long. 114°29'16" W)
Twin Falls VORTAC
(lat. 42°28'47" N, long. 114°29'22" W)

That airspace extending upward from 700 feet above the surface within 8.3 miles north and 4.3 miles south of the Twin Falls VORTAC 086° and 281° radials extending from the VORTAC to 26.1 miles east and 16.1 miles west, and within 4.3 miles each side of the Twin Falls 156° radial extending upward from 1,200 feet above the surface bounded on the northeast by a line beginning at the intersection of long. 114°01'03" W and V-500, extending south along long. 114°01'03" W and V-500, to V-269, southwest along V-269 to the 18.3 mile radius of the Twin Falls VORTAC, thence clockwise via the 18.3-mile radius to V-484, northwest along V-484 to the 14.4 mile radius of the Twin Falls VORTAC, thence clockwise along the 14.4-mile radius to V-293, southwest along V-293 to the intersection of V-293 and long. 115°00'00" W, thence north along long. 115°00'00" W to a point 7.9 miles southwest of V-253, thence northwest and parallel to V-253 for 25.9 miles, thence to the intersection of V-4, V-253, and V-330, east along V-330 to V-293, north along V-293 to V-500, then to the point of beginning; excluding that airspace within Federal airways.

* * * * *

Issued in Seattle, Washington, on April 19, 1994.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division.

[FR Doc. 94-11283 Filed 5-9-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-ANM-24]

Proposed Amendment to Class D Airspace; Medford, Portland-Hillsboro, and Salem, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Medford, Portland-Hillsboro, and Salem, Oregon, Class D airspace. This action is necessary to correct a portion of the airspace descriptions inadvertently omitted during the airspace reclassification process. This action would amend the Class D airspace from full-time to part-time. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "airport traffic area" and "control zones" with operating control towers, replacing them with the designation "Class D airspace." This amendment would bring publications up-to-date giving continuous information to the aviation public.

DATES: Comments must be received on or before June 28, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 94-ANM-24, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 94-ANM-24, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone number: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-ANM-24." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM-530, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Medford, Portland-Hillsboro, and Salem, Oregon, to correct an error in the Class D airspace descriptions. During the airspace reclassification process (57 FR 38962; August 27, 1992) the language designating the Class D airspace at these locations as part-time was inadvertently omitted. This action would correct that omission. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and "control zones" with operating control towers, and replaced them with the designation "Class D airspace." The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General.

* * * * *

ANM or D Medford, OR [Revised]

Medford-Jackson Airport, OR
(lat. 42°22′20″ N, long. 122°52′21″ W)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.1-mile radius of the Medford-Jackson Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM or D Portland-Hillsboro, OR [Revised]

Portland-Hillsboro Airport, OR
(lat. 45°32′25″ N, long. 122°56′59″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.2-mile radius of the Portland-Hillsboro Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANM or D Salem, OR [Revised]

Salem, McNary Field, OR
(lat. 44°54′34″ N, long. 123°00′09″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4-mile radius of McNary Field. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on April 15, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–11284 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–11]

Amendment of Class D Airspace; Grand Junction, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Grand Junction, Colorado, Class D airspace from full-time to part-time. It will correct that part of the airspace description which was inadvertently omitted during the airspace reclassification process. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "airport traffic area" and "control zones" with operating control towers, replacing them with the designation "Class D airspace." This amendment brings publications up-to-date giving continuous information to the aviation public.

EFFECTIVE DATE: 0901 UTC, June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–11, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On March 16, 1994, the FAA proposed to amend part 71 of Federal Aviation Regulations (14 CFR part 71) by amending the Grand Junction, Colorado Class D airspace designation (59 FR 12208). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

During the airspace reclassification process (57 FR 38962, August 27, 1992) the language designating the Grand Junction, Colorado Class D airspace as part-time was inadvertently omitted. This action corrects that omission. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the terms "airport traffic area" and "control zone" with operating control towers, and replaced them with the designation "Class D airspace." Class D airspace is published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class D airspace at Grand Junction, Colorado. The coordinates in this final rule are in North American Datum 83.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ANM CO D Grand Junction, CO [Revised]

Grand Junction, Walker Field, CO
(Lat. 39°07′21″ N, long 108°31′36″ W)

That airspace extending upward from the surface to and including 7,400 feet MSL within a 4.7-mile radius of Walker Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * *

Issued in Seattle, Washington, on April 15, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–11286 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 90N–135D]

RIN 0905–AD96

Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins, Minerals, Herbs, or Other Similar Nutritional Substances; Corrections and Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; corrections and technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 4, 1994 (59 FR 354). The document amended the food labeling regulations to establish requirements for the nutrition labeling of dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances. The document was published with some typographical and editorial errors. This document corrects those errors.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5587.

The Corrections

In FR Doc. 93–31813, appearing on page 354, in the **Federal Register** of Tuesday, January 4, 1994, the following corrections are made:

1. On page 354, in the third column, in the "EFFECTIVE DATE:" caption, "July 5, 1995" is corrected to read "July 1, 1995".

2. On page 361, in the second column, in the 8th line from the bottom, the acronym "EASDDL's" is corrected to read "ESADDI's".

3. On page 364, in the second column, in the first full paragraph, in line 7, the word "is" is removed; and in the third column, beginning in the 16th line from the bottom, the phrase "label references values" is corrected to read "label reference values".

4. On page 366, in the first column, in the second full paragraph, in the 9th line from the bottom of the paragraph, the word "supplement" is corrected to read "supplements".

5. On page 368, in the second column, in lines 28 and 30, the word "parallel" is corrected to read "perpendicular".

6. On page 370, in the third column, in the first full paragraph, in line 11, the word "suggest" is corrected to read "suggests".

7. On page 371, in the second column, in reference 3, in line 3, the word "More" is removed; and in reference 6, in line 1, the name "Taylor M. Quinn" is corrected to read "L. Robert Lake".

The Technical Amendments

§ 101.12 [Amended]

8. Section 101.12 *Reference amounts customarily consumed per eating occasion* is amended in Table 2, in footnote 2, by removing the phrase "dry, fresh, and frozen pasta" and adding in its place "fresh and frozen pasta".

§ 101.36 [Amended]

9. Section 101.36 *Nutrition labeling of dietary supplements of vitamins and minerals* is amended in paragraph (b)(4) introductory text, by removing the phrase "molybdenum, selenium" and adding in its place the phrase "molybdenum, and selenium"; in paragraph (b)(4)(vi), by removing the phrase "that is followed" and adding in its place "and is followed"; in paragraph (c)(10), the sample label is amended by removing the entries "Calcium 162 mg" and "Phosphorus 125 mg" and adding in their place "Calcium 0.162 g" and "Phosphorus 0.125 g"; and in paragraph (g), the word "mineral" is revised to read "minerals".

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure and delayed effective date on these changes are unnecessary, because FDA is merely remedying editorial and nonsubstantive errors.

Dated: May 4, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–11201 Filed 5–5–94; 11:44 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8538]

RIN 1545–AS50

Arbitrage Restrictions on Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations on the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments. Changes to the applicable law were made by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989, and the Revenue Reconciliation Act of 1990. These regulations affect issuers of tax-exempt bonds and provide guidance for complying with the arbitrage and related restrictions. The text of the temporary regulations also serves as the text of a portion of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective on June 9, 1994.

For dates of applicability of these regulations, see § 1.148–11T.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo at 202–622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1347.

For further information concerning this collection of information, and

where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

Section 148 restricts the use of proceeds of tax-exempt State and local bonds to acquire higher yielding investments. Proposed regulations relating to the arbitrage and related rules were published at §§ 1.148–0 through 1.148–11, 1.149(d)–1, 1.149(g)–1, 1.150–1, and 1.150–2 in the **Federal Register** for November 6, 1992. Written comments were received on the proposed regulations, and additional public comments were received at a public hearing held on February 2, 1993. After consideration of the comments, the proposed regulations were modified and adopted in final form in the **Federal Register** for June 18, 1993 (the June 1993 regulations).

This document contains temporary and final regulations amending the Income Tax Regulations (26 CFR part 1) under sections 103, 148, 149, and 150 of the Internal Revenue Code to clarify and revise certain provisions of the June 1993 regulations. The amended provisions of the June 1993 regulations contain references to applicable provisions of the temporary regulations, and the final regulations apply as if the changes contained in the appropriate portion of the temporary regulations were incorporated therein. For example, § 1.148–1(c)(4)(ii)(A) is amended to reference § 1.148–1T(c)(4)(ii)(A), which contains provisions that apply in lieu of those formerly contained in § 1.148–1(c)(4)(ii)(A).

Explanation of Provisions

A. § 1.103–8T—Interest on Bonds To Finance Certain Exempt Facilities

The June 1993 regulations amended the "official action" rules of § 1.103–8(a)(5) to better coordinate those rules and the reimbursement bond rules of § 1.150–2. The temporary regulations clarify the application of these rules to situations in which the financed facility is placed in service after the issuance of the bonds.

B. § 1.148–1T—Definitions and Elections

The June 1993 regulations provide that replacement proceeds may arise if a working capital reserve is financed but not to the extent that the issuer maintained a working capital reserve. The temporary regulations provide guidance to determine whether an issuer has maintained a working capital reserve.

C. § 1.148–4T—Yield on an Issue of Bonds

1. Certain Variable Yield Bonds Aggregated for Fixed Yield Treatment

The temporary regulations expand the types of bonds eligible for fixed yield treatment to include certain variable yield bonds that, if aggregated and treated as a single bond, would be a fixed yield bond.

2. Qualified Hedging Transactions

The June 1993 regulations permit certain qualified hedges to be taken into account in determining the yield on an issue. The temporary regulations revise and clarify these rules. Most significantly, the temporary regulations amend the rules treating certain variable yield bonds as fixed yield bonds to provide fixed yield treatment for bonds that are hedged with certain other hedges, such as certain interest rate caps. Municipal financing transactions with so-called embedded derivative products raise significant policy issues under any contingent interest regulations that may be promulgated under section 1275. For this reason, under the original issue discount regulations, certain of these transactions do not qualify as "variable rate debt instruments" and are subject to the contingent payment rules. The modifications to the qualified hedging rules do not imply a conclusion by the IRS and Treasury that the "interest" payments in these financings are properly treated as tax-exempt. It is expected that future regulations will deal specifically with these issues. In a related change, the temporary regulations clarify that a hedge (other than a qualified hedge) may constitute investment-type property. The proposed amendments to the arbitrage regulations also provide special rules for purposes of determining whether interest rate caps are investment-type property.

D. § 1.148–5T—Yield and Valuation of Investments

1. Permissive Single Investment Rule

The temporary regulations limit the rule that permits yield restricted investments to be treated as a single investment for arbitrage rebate purposes to nonpurpose investments in a refunding escrow fund and in a sinking fund that is related to the refunding escrow fund.

2. Fair Market Valuation

The temporary regulations limit the exception to the fair market valuation rule for certain transferred proceeds allocations, universal cap allocations, and investments in a commingled fund to those involving exclusively tax-exempt bond issues.

E. § 1.148–9—Arbitrage Rules for Refunding Issues

Multipurpose Issue Allocations

The June 1993 regulations provide that allocations of multipurpose issues must be reasonable. For multipurpose refunding issues, in addition to the reasonableness requirement, the June 1993 regulations provide additional limitations. Comments are requested on possible changes to the allocation rule that generally focuses on matching the debt service structure of the prior issue that would provide additional flexibility for refundings involving extensions of maturity.

F. § 1.148–11T—Effective Dates

Overpayment of Rebate

The temporary regulations allow for retroactive application of the provisions of the June 1993 regulations relating to recovery of overpayments.

G. § 1.149(d)–1T—Limitations on Advance Refundings

Savings Test

The temporary regulations clarify the application of the multipurpose issue rules to the section 149(d) requirement that the refunded bonds in an advance refunding be retired at the first call date if savings are produced.

H. § 1.150–1T—Definitions

Definition of Issue

The June 1993 regulations define "issue" for purposes of the tax-exempt bond restrictions. The temporary regulations clarify certain aspects of this definition including whether bonds are expected to be paid from the same source of funds.

I. Effective Dates

The temporary and final regulations apply to bonds sold after June 6, 1994. In addition, issuers may apply these regulations to other bonds to which the June 1993 regulations apply.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of

the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is William P. Cejudo, Office of Assistant Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—[AMENDED]

PART 602—[AMENDED]

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

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

Section 1.148–11T also issued under 26 U.S.C. 148(f), (g), and (i). * * *

Par. 2. In § 1.103–8, paragraph (a)(5) is revised to read as follows:

§ 1.103–8 Interest on bonds to finance certain exempt facilities.

(a) * * *

* * * * *

(5) See § 1.103–8T.

* * * * *

Par. 3. Section 1.103–8T is added to read as follows:

§ 1.103–8T Interest on bonds to finance certain exempt facilities (temporary).

(a)(1) through (4) [Reserved]. For guidance see § 1.103–8.

(5) *Limitation.* (i) A facility qualifies under § 1.103–8 only to the extent that there is a valid reimbursement allocation under § 1.150–2 with respect to expenditures that are incurred before the issue date of the bonds to provide the facility and that are to be paid with the proceeds of the issue. In addition, if the original use of the facility begins before the issue date of the bonds, the facility does not qualify under § 1.103–8 if any person that was a substantial user of the facility at any time during the 5-year period before the issue date or any related person to that user receives (directly or indirectly) 5 percent or more of the proceeds of the issue for the user's interest in the facility, and is a substantial user of the facility at any time during the 5-year period after the issue date, unless—

(A) An official intent for the facility is adopted under § 1.150–2 within 60 days after the date on which acquisition, construction, or reconstruction of that facility commenced; and

(B) For an acquisition, no person that is a substantial user or related person after the acquisition date was also a substantial user more than 60 days before the date on which the official intent was adopted.

(ii) A facility the original use of which commences (or the acquisition of which occurs) on or after the issue date of bonds to provide that facility qualifies under § 1.103–8 only to the extent that an official intent for the facility is adopted under § 1.150–2 by the issuer of the bonds within 60 days after the commencement of the construction, reconstruction, or acquisition of that facility. Temporary construction or other financing of a facility prior to the issuance of the bonds to provide that facility will not cause that facility to be one that does not qualify under this paragraph (a)(5)(ii).

(iii) For purposes of paragraph (a)(5)(i) of this section, *substantial user* has the meaning used in section 147(a)(1); *related person* has the meaning used in section 144(a)(3); and a user that is a governmental unit within the meaning of § 1.103–1 is disregarded.

(iv) Except to the extent provided in § 1.150–2(j) and § 1.148–11T(i), this paragraph (a)(5) applies to bonds issued after June 30, 1993.

Par. 4. In § 1.148–0, paragraph (c) is amended as follows:

1. The introductory text is revised.

2. The entry for § 1.148–4, paragraph (b)(5) is redesignated paragraph (b)(6).

3. A new entry for § 1.148–4, paragraph (b)(5) is added.

4. An entry for § 1.148–11, paragraph (i) is added.

§ 1.148–0 Scope and table of contents.

* * * * *

(c) *Table of contents.* This paragraph (c) lists the table of contents for §§ 1.148–1, 1.148–2, 1.148–3, 1.148–4, 1.148–5, 1.148–6, 1.148–7, 1.148–8, 1.148–9, 1.148–10 and 1.148–11.

* * * * *

§ 1.148–4 Yield on an issue of bonds.

* * * * *

(b) * * *

(5) Special aggregation rule treating certain bonds as a single fixed yield bond.

* * * * *

§ 1.148–11 Effective dates.

* * * * *

(i) Transition rule for certain amendments.

Par. 5. In § 1.148–1, paragraph (c)(4)(ii)(A) is revised to read as follows:

§ 1.148–1 Definitions and elections.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(A) *In general.* See § 1.148–1T(c)(4)(ii)(A).

* * * * *

Par. 6. Section 1.148–1T is added to read as follows:

§ 1.148–1T Definitions and elections (temporary).

(a) [Reserved]. For guidance see § 1.148–1.

(b) *Certain definitions.*

Investment-type property. See § 1.148–1(b). Investment-type property also includes a contract that would be a hedge (within the meaning of § 1.148–4(h)) except that it contains a significant investment element.

(c) through (c)(4)(i) [Reserved]. For guidance see § 1.148–1.

(c)(4)(ii) *Bonds financing a working capital reserve*—(A) *In general.* Except as otherwise provided in § 1.148–1(c)(4)(ii)(B), replacement proceeds arise to the extent a working capital reserve is, directly or indirectly, financed with the proceeds of the issue (regardless of the expenditure of proceeds of the issue). Thus, for example, if an issuer that does not maintain a working capital reserve borrows to fund such a reserve, the issuer will have replacement proceeds. To determine the amount of a working capital reserve maintained, an issuer may use the average amount maintained as a working capital reserve during annual periods of at least one year, the last of which ends within a year before the issue date. For example, the amount of a working capital reserve may be computed using the average of the beginning or ending monthly balances of the amount maintained as a reserve (net of unexpended gross proceeds) during the one year period preceding the issue date.

Par. 7. In § 1.148–2, paragraph (b)(2)(ii) is revised to read as follows:

§ 1.148–2 General arbitrage yield restriction rules.

* * * * *

(b) * * *

(2) * * *

(ii) *Exception to certification requirements.* See § 1.148–2T(b)(2)(ii).

* * * * *

Par. 8. Section 1.148–2T is added to read as follows:

§ 1.148–2T General arbitrage yield restriction rules (temporary).

(a) through (b)(2)(i) [Reserved]. For guidance see § 1.148–2.

(b)(2)(ii) *Exceptions to certification requirement.* An issuer is not required to make a certification for an issue under § 1.148–2(b)(2)(i) if—

(A) The issuer reasonably expects as of the issue date that there will be no unspent gross proceeds after the issue date, other than gross proceeds in a bona fide debt service fund (e.g., *equipment lease* financings in which the issuer purchases equipment in exchange for an installment payment note); or

(B) The issue price of the issue does not exceed $1,000,000.

Par. 9. In § 1.148–3, paragraph (h)(3) is amended by adding a sentence after the last sentence to read as follows:

§ 1.148–3 General arbitrage rebate rules.

* * * * *

(h) * * *

(3) * * * See also § 1.148–3T(h)(3).

* * * * *

Par. 10. Section 1.148–3T is added to read as follows:

§ 1.148–3T General arbitrage rebate rules (temporary).

(a) through (h)(2) [Reserved]. For guidance see § 1.148–3.

(h)(3) *Waivers of the penalty.* For purposes of § 1.148–3(h)(3), willful neglect does not include a failure that is attributable solely to the permissible retroactive selection of a short first bond year if the rebate amount that the issuer failed to pay is paid within 60 days of the selection of that bond year.

Par. 11. Section 1.148–4 is amended as follows:

1. Paragraph (b)(5) is redesignated as paragraph (b)(6).
2. New paragraph (b)(5) is added.
3. Paragraph (g) is revised.
4. Paragraph (h)(1) is revised.
5. Paragraph (h)(2)(vii) is revised.
6. Paragraph (h)(2)(ix) is revised.
7. Paragraphs (h)(3), (4), and (5) are revised.
8. The revised and added provisions read as follows:

§ 1.148–4 Yield on an issue of bonds.

* * * * *

(b) * * *

(5) *Special aggregation rule treating certain bonds as a single fixed yield bond.* See § 1.148–4T(b)(5).

* * * * *

(g) *Yield on certain mortgage revenue and student loan bonds.* See § 1.148–4T(g).

(h) * * *

(1) *In general.* See § 1.148–4T(h)(1).

(2) * * *

* * * * *

(vii) *Timing and duration.* See § 1.148–4T(h)(2)(vii).

* * * * *

(ix) *Identification.* See § 1.148–4T(h)(2)(ix).

(3) *Accounting for qualified hedges.* See § 1.148–4T(h)(3).

(4) *Certain variable yield bonds treated as fixed yield bonds.* See § 1.148–4T(h)(4).

(5) *Authority of the Commissioner.* See § 1.148–4T(h)(6).

Par. 12. Section 1.148–4T is added to read as follows:

§ 1.148–4T Yield on an issue of bonds (temporary).

(a) through (b)(4) [Reserved]. For guidance see § 1.148–4.

(b)(5) *Special aggregation rule treating certain bonds as a single fixed yield bond.* Two variable yield bonds of an issue are treated in the aggregate as a single fixed yield bond if—

(i) Aggregate treatment would result in the single bond being a fixed yield bond; and

(ii) The terms of the bonds do not contain any features that could distort the aggregate fixed yield from what the yield would be if a single fixed yield bond were issued. For example, if an issue contains a bond bearing interest at a floating rate and a related bond bearing interest at a rate equal to a fixed rate minus that floating rate, those two bonds are treated as a single fixed yield bond only if neither bond may be redeemed unless the other bond is also redeemed at the same time.

(c) through (f) [Reserved]. For guidance see § 1.148–4.

(g) *Yield on certain mortgage revenue and student loan bonds.* For purposes of section 148 and § 1.148–4, section 143(g)(2)(C)(ii) applies to the computation of yield on an issue of qualified mortgage bonds or qualified veterans' mortgage bonds. For purposes of applying sections 148 and 143(g) to a variable yield issue of qualified mortgage bonds, qualified veterans' mortgage bonds, or qualified student loan bonds, the yield on that issue is computed over the term of the issue, and § 1.148–4(d) does not apply to the issue. As of any date before the final maturity date, the yield over the term of the issue is based on the actual amounts paid or received to that date and the amounts that are reasonably expected (as of that date) to be paid or received over the remaining term of the issue.

(h) *Qualified hedging transactions*—(1) *In general.* Payments made or received by an issuer under a qualified hedge (as defined in § 1.148–4(h)(2)) relating to bonds of an issue are taken into account (as provided in paragraph (h)(3) of this section) to determine the yield on the issue. Except as provided in paragraphs (h)(4) and (h)(5)(ii)(C) of this section, the bonds to which a qualified hedge relates are treated as variable yield bonds. These hedging rules apply solely for purposes of sections 143(g), 148, and 149(d).

(2) (i) through (vi) [Reserved]. For guidance see § 1.148–4(h)(2).

(2)(vii) *Timing and duration.* For a contract to be a qualified hedge under § 1.148–4(h)(2), payments must not begin to accrue under the contract on a date earlier than the issue date of the hedged bonds and must not accrue longer than the hedged interest payments on the hedged bonds.

(viii) [Reserved]. For guidance see § 1.148–4(h).

(ix) *Identification.* For a contract to be a qualified hedge under § 1.148–4(h)(2), the contract must be identified by the actual issuer on its books and records maintained for the hedged bonds not later than three days after the date on which the parties enter into the contract. The identification must specify the hedge provider, the terms of the contract, and the hedged bonds. The identification must contain sufficient detail to establish that the requirements of § 1.148–4(h)(2), and if applicable, paragraph (h)(4) of this section are satisfied. The existence of the hedge must be noted on all forms filed with the Internal Revenue Service for the issue on or after the date on which the hedge is entered into.

(3) *Accounting for qualified hedges*—(i) *In general.* Except as otherwise provided in paragraph (h)(4) of this section, payments made or received by the issuer under a qualified hedge are treated as payments made or received, as appropriate, on the hedged bonds that are taken into account in determining the yield on those bonds. These payments are reasonably allocated to the hedged bonds in the period to which the payments relate, as determined under paragraph (h)(3)(iii) of this section. Payments made or received by the issuer include payments deemed made or received when a contract is terminated or deemed

terminated under this paragraph (h)(3). Payments reasonably allocable to the reduction of risk of interest rate changes and to the hedge provider's overhead under this paragraph (h) are included as payments made or received under a qualified hedge.

(ii) *Exclusions from hedge.* Payments for services or other items under the contract that are not expressly treated as payments under the qualified hedge under paragraph (h)(3)(i) of this section are not payments with respect to a qualified hedge.

(iii) *Timing and allocation of payments.* The period to which a payment made by the issuer relates is determined under general Federal income tax principles, including, without limitation, § 1.446–3, and adjusted as necessary to reflect the end of a computation period and the start of a new computation period. Except as provided in paragraphs (h)(3)(iv) and (h)(5)(ii) of this section, a payment received by the issuer is taken into account in the period that the interest payment that the payment hedges is required to be made.

(iv) *Termination payments*—(A) *Termination defined.* A termination of a qualified hedge includes any sale or other disposition of the hedge by the issuer, or the acquisition by the issuer of an offsetting hedge. A deemed termination occurs when the hedged bonds are redeemed and when a hedge ceases to be a qualified hedge of the hedged bonds. In the case of an assignment by a hedge provider of its remaining rights and obligations on the hedge to a third party or a modification of the hedging contract, the assignment or modification is treated as a termination with respect to the issuer only if it results in a deemed exchange of the hedge and a realization event under section 1001.

(B) *General rule.* A payment made or received by an issuer to terminate a qualified hedge, including loss or gain realized or deemed realized, is treated as a payment made or received on the hedged bonds, as appropriate. The payment is reasonably allocated to the remaining periods originally covered by the terminated hedge in a manner that reflects the economic substance of the hedge.

(C) *Special rule for terminations when bonds are redeemed.* Except as otherwise provided in this paragraph (h)(3)(iv)(C) and in paragraph (h)(3)(iv)(D) of this section, when a qualified hedge is deemed terminated because the hedged bonds are redeemed, the fair market value of the contract on the redemption date is treated as a termination payment made or received on that date. When hedged bonds are redeemed, any payment received by the issuer on termination of a hedge, including a termination payment or a deemed termination payment, reduces, but not below zero, the interest payments made by the issuer on the hedged bonds in the computation period ending on the termination date. The remainder of the payment, if any, is reasonably allocated over the bond years in the immediately preceding computation period or periods to the extent necessary to eliminate the excess.

(D) *Special rules for refundings.* To the extent that the hedged bonds are redeemed using the proceeds of a refunding issue, the termination payment is accounted for under paragraph (h)(3)(iv)(B) of this section by treating it as a payment on the refunding issue, rather than the hedged bonds. In addition, to the extent that the refunding issue, rather than the hedged bonds, has been redeemed, paragraph (h)(3)(iv)(C) of this section applies to the termination payment by treating it as a payment on the redeemed refunding issue.

(E) *Safe harbor for certain non-level payments.* A non-level payment to terminate a hedge does not result in that hedge failing to satisfy the applicable provisions of paragraph (h)(3)(iv)(B) of this section if the payment is allocated to each bond year for which the hedge would have been in effect in accordance with this paragraph (h)(3)(iv)(E). For a variable yield issue, an equal amount (or for any short bond year, a proportionate amount of the equal amount) must be allocated to each bond year such that the sum of the present values of the annual amounts equals the present value of the non-level payment. Present value is computed as of the day the hedge is terminated, using the yield on the hedged bonds, determined without regard to the non-level payment. The yield used for this purpose is computed for the period beginning on the first date the hedge is in effect and ending on the date the hedge is terminated. On the other hand, for a fixed yield issue, the non-level payment is taken into account as a single payment on the date it is paid.

(4) *Certain variable yield bonds treated as fixed yield bonds*—(i) *In general.* Except as otherwise provided in this paragraph (h)(4), if the issuer of variable yield bonds enters into a qualified hedge, the hedged bonds are treated as fixed yield bonds paying a fixed interest rate if:

(A) *Start date.* The date on which payments begin to accrue on the hedge is not later than 15 days after the issue date of the hedged bonds.

(B) *Maturity.* The term of the hedge is equal to the entire period during which the hedged bonds bear interest at variable interest rates.

(C) *Payments closely correspond.* Payments to be received under the hedge correspond closely in time to the hedged portion of the payments on the hedged bonds. Hedge payments received within 15 days of the related payments on the hedged bonds generally so correspond.

(D) *Aggregate payments fixed.* Taking into account all payments made and received under the hedge and all payments on the hedged bonds (i.e., after netting all payments), the issuer's aggregate payments are fixed and determinable as of a date not later than 15 days after the issue date of the hedged bonds. Payments on bonds are treated as fixed for purposes of this paragraph (h)(4)(i)(D) if payments on the bonds are based, in whole or in part, on one interest rate, payments on the hedge are based, in whole or in part, on a second interest rate that is substantially the same as, but not identical to, the first interest rate and payments on the bonds would be fixed if the two rates were identical. Rates are treated as substantially the same if they are reasonably expected to be substantially the same throughout the term of the hedge. For example, an objective 30-day tax-exempt variable rate index or other objective index (e.g., J.J. Kenny Index, PSA Municipal swap index, a percentage of LIBOR) may be substantially the same as an issuer's individual 30-day interest rate.

(ii) *Accounting.* Except as otherwise provided in this paragraph (h)(4)(ii), in determining yield on the hedged bonds, all the issuer's actual interest payments on the hedged bonds and all payments made and received on a hedge described in paragraph (h)(4)(i) of this section are taken into account. If payments on the bonds and payments on the hedge are based, in whole or in part, on variable interest rates that are substantially the same within the meaning of paragraph (h)(4)(i)(D) of this section (but not identical), yield on the issue is determined by treating the variable interest rates as identical. For example, if variable rate bonds bearing interest at a weekly rate equal to the rate necessary to remarket the bonds at par are hedged with an interest rate swap under which the issuer receives payments based on a short-term floating rate index that is substantially the same as, but not identical to, the weekly rate on the bonds, the interest payments on the bonds are treated as equal to the

payments received by the issuer under the swap for purposes of computing the yield on the bonds.

(iii) *Effect of termination*—(A) *In general.* Except as otherwise provided in this paragraph (h)(4)(iii) and paragraph (h)(5) of this section, the issue of which the hedged bonds are a part is treated as if it were reissued as of the termination date of the qualified hedge covered by paragraph (h)(4)(i) of this section in determining yield on the hedged bonds for purposes of § 1.148–3. The redemption price of the retired issue and the issue price of the new issue equal the aggregate values of all the bonds of the issue on the termination date. In computing the yield on the new issue for this purpose, any termination payment is accounted for under paragraph (h)(3)(iv) of this section, applied by treating the termination payment as made or received on the new issue under this paragraph (h)(4)(iii).

(B) *Effect of early termination.* Except as otherwise provided in this paragraph (h)(4)(iii), the general rules of paragraph (h)(4)(i) of this section do not apply in determining the yield on the hedged bonds for purposes of § 1.148–3 if the hedge is terminated or deemed terminated within 5 years after the issue date of the issue of which the hedged bonds are a part. Thus, the hedged bonds are treated as variable yield bonds for purposes of § 1.148–3 from the issue date.

(C) *Certain terminations disregarded.* This paragraph (h)(4)(iii) does not apply to a termination if, based on the facts and circumstances (e.g., taking into account both the termination and any qualified hedge that immediately replaces the terminated hedge), there is no change in the yield. In addition, this paragraph (h)(4)(iii) does not apply to a termination caused by the bankruptcy or insolvency of the hedge provider if the Commissioner determines that the termination occurred without any action by the issuer (other than to protect its rights under the hedge).

(5) *Special rules for certain hedges*—(i) *Certain acquisition payments.* A payment to the issuer by the hedge provider (e.g., an up-front payment for an off-market swap) in connection with the acquisition of a hedge that, but for that payment, would be a qualified hedge, does not cause the hedge to fail to be a qualified hedge provided the payment to the issuer and the issuer's payments under the hedge in excess of those that it would make if the hedge bore rates equal to the on-market rates for the hedge are separately identified in a certification of the hedge provider and not taken into account in determining the yield on the issue of which the hedged bonds are a part. The on-market rates are determined as of the date the parties enter into the contract.

(ii) *Anticipatory hedges*—(A) *In general.* A contract does not fail to be a hedge under § 1.148–4(h)(2)(i)(A) solely because it is entered into with respect to an anticipated issuance of tax-exempt bonds. The identification required under § 1.148–4T(h)(2)(ix) must specify the reasonably expected governmental purpose, principal amount, and issue date of the hedged bonds, and the manner in which interest is reasonably expected to be computed.

(B) *Special rules.* Payments made in connection with the issuance of a bond to terminate or otherwise close (*terminate*) an anticipatory hedge of that bond do not prevent the hedge from satisfying the requirements of § 1.148–4(h)(2)(vi) and paragraph (h)(2)(vii) of this section. Amounts received or deemed to be received by the issuer in connection with the issuance of the hedged bonds to terminate an anticipatory hedge are treated as proceeds of the hedged bonds.

(C) *Fixed yield treatment.* A bond that is hedged with an anticipatory hedge is a fixed yield bond if, taking into account payments on the hedge that are made or fixed on or before the issue date of the bond and the payments to be made on the bond, the bond satisfies the definition of fixed yield bond. See also paragraph (h)(4) of this section.

(6) *Authority of the Commissioner*—(i) *In general.* A contract is not a qualified hedge if the Commissioner determines, based on all the facts and circumstances, that treating the contract as a qualified hedge would provide a material potential for arbitrage, or a principal purpose for entering into the contract is that arbitrage potential. For example, a contract that requires a substantial nonperiodic payment may constitute, in whole or part, an embedded loan, investment-type property, or other investment.

(ii) *Other qualified hedges.* The Commissioner, by publication of a revenue ruling or revenue procedure, may specify contracts that do not otherwise meet the requirements of § 1.148–4(h)(2) as qualified hedges and contracts that do not otherwise meet the requirements of paragraph (h)(4) of this section as causing the hedged bonds to be treated as fixed yield bonds.

(iii) *Recomputation of yield.* If an issuer enters into a hedge that is not properly identified, fails to properly associate an anticipatory hedge with the hedged bonds, or otherwise fails to meet the requirements of this section, the Commissioner may recompute the yield on the issue taking the hedge into account if the failure to take the hedge into account distorts that yield or otherwise fails to clearly reflect the economic substance of the transaction.

Par. 13. Section 1.148–5 is amended as follows:

1. Paragraph (b)(2)(iii) is revised.
2. Paragraph (c)(2)(i) is revised.
3. Paragraph (c)(3)(ii) is revised.
4. Paragraph (d)(3)(ii) is revised.
5. A sentence is added at the end of paragraph (e)(2)(ii)(B).
6. Paragraph (e)(2)(iii) is revised.
7. The revised provisions read as follows:

§ 1.148–5 Yield and valuation of investments.

* * * * *

(b) * * *

(2) * * *

(iii) *Permissive application of single investment rules to certain yield restricted investments for all purposes of section 148.* See § 1.148–5T(b)(2)(iii).

* * * * *

(c) * * *

(2) * * *

(i) *In general.* See § 1.148–5T(c)(2)(i).

* * * * *

(3) * * *

(ii) *Exception to yield reduction payments rule for advance refunding issues.* See § 1.148–5T(c)(3)(ii).

(d) * * *

(3) * * *

(ii) *Exception to fair market value requirement for transferred proceeds allocations, universal cap allocations, and commingled funds.* See § 1.148–5T(d)(3)(ii).

(e) * * *

(2) * * *

(ii) * * *

(B) * * * See also § 1.148–5T(e)(2)(B).

(iii) *Special rule for guaranteed investment contracts.* See § 1.148–5T(e)(2)(iii).

* * * * *

Par. 14. Section 1.148–5T is added to read as follows:

§ 1.148–5T Yield and valuation of investments (temporary).

(a) through (b)(2)(ii) [Reserved]. For guidance see § 1.148–5.

(b)(2)(iii) *Permissive application of single investment rules to certain yield restricted investments for all purposes of section 148.* For all purposes of section 148, an issuer may treat all of the yield restricted nonpurpose investments in a refunding escrow and a sinking fund that is reasonably expected as of the issue date to be maintained to reduce the yield on the investments in the refunding escrow as a single investment having a single yield, determined under § 1.148(b)(2).

(b) (2)(iv) through (c)(1) [Reserved]. For guidance see § 1.148–5.

(c)(2) *Manner of payment*—(i) *In general.* Except as otherwise provided in § 1.148–5(c)(2)(ii), an amount is paid under § 1.148–5(c) if it is paid to the United States at the same time and in the same manner as rebate amounts are required to be paid or at such other time or in such manner as the Commissioner may prescribe. For example, yield reduction payments must be made on or before the date of required rebate installment payments as described in § 1.148–3(f). The date a payment is required to be paid is determined without regard to § 1.148–3(h). An amount that is paid untimely is not taken into account under this paragraph (c) unless the Commissioner determines that the failure to pay timely is not due to willful neglect. The provisions of § 1.148–3(i) apply to payments made under § 1.148–5(c).

(c)(2)(ii) through (c)(3)(i) [Reserved] For guidance see § 1.148–5.

(c)(3)(ii) *Exception to yield reduction payments rule for advance refunding issues.* Section 1.148–5(c)(1) does not apply to investments allocable to gross proceeds of an advance refunding issue, other than—

(A) Transferred proceeds to which § 1.148–5(c)(3)(i)(C) applies;

(B) Replacement proceeds to which § 1.148–5(c)(3)(i)(F) applies; and

(C) Transferred proceeds to which § 1.148–5(c)(3)(i)(E) applies, but only to the extent necessary to satisfy yield restriction under section 148(a) on those proceeds treating all investments allocable to those proceeds as a separate class.

(d)(1) through (d)(3)(i) [Reserved]. For guidance see § 1.148–5.

(d)(3)(ii) *Exception to fair market value requirement for transferred proceeds allocations, universal cap allocations, and commingled funds.* Section 1.148–5(d)(3)(i) does not apply if the investment is allocated from one issue to another issue as a result of the transferred proceeds allocation rule under § 1.148–9(b) or the universal cap rule under § 1.148–6(b)(2), provided that both issues consist exclusively of tax-exempt bonds. In addition, § 1.148–5(d)(3)(i) does not apply to investments in a commingled fund (other than a bona fide debt service fund) unless it is an investment being initially deposited in or withdrawn from a commingled fund described in § 1.148–6(e)(5)(iii).

(e)(1) through (e)(2)(ii)(A) [Reserved]. For guidance see § 1.148–5.

(e)(2)(ii)(B) *External commingled funds.* For any semiannual period, a commingled fund satisfies the 10 percent requirement of § 1.148–5(e)(2)(ii)(B) if—

(*1*) Based on average amounts on deposit, this requirement was satisfied for the prior semiannual period; and

(*2*) The fund does not accept deposits that would cause it to fail to meet this requirement.

(iii) *Special rule for guaranteed investment contracts.* For a guaranteed investment contract, a broker's commission or similar fee paid on behalf of either an issuer or the provider is treated as an administrative cost and, except in the case of an issue that satisfies section 148(f)(4)(D)(i), is not a qualified administrative cost to the extent that the present value of the commission, as of the date the contract is allocated to the issue, exceeds the present value of annual payments equal to .05 percent of the weighted average amount reasonably expected to be invested each year of the term of the contract. For this purpose, present value is computed using the taxable discount rate used by the parties to compute the commission or, if not readily ascertainable, a reasonable taxable discount rate.

Par. 15. In § 1.148–6, paragraph (d)(3)(iii)(C) is revised to read as follows:

§ 1.148–6 General allocation and accounting rules.

* * * * *

(d) * * *

(3) * * *

(iii) * * *

(C) *Qualified endowment funds treated as unavailable.* See § 1.148–6T(d)(3)(iii)(C).

* * * * *

Par. 16. Section 1.148–6T is added to read as follows:

§ 1.148–6T General allocation and accounting rules (temporary).

(a) through (d)(3)(iii)(B) [Reserved]. For guidance see § 1.148–6.

(d)(3)(iii)(C) *Qualified endowment funds treated as unavailable.* For a 501(c)(3) organization, a qualified endowment fund is treated as unavailable. A fund is a qualified endowment fund if—

(*1*) The fund is derived from gifts or bequests, or the income thereon, that were neither made nor reasonably expected to be used to pay working capital expenditures;

(*2*) Pursuant to reasonable, established practices of the organization, the governing body of the 501(c)(3) organization designates and consistently operates the fund as a permanent endowment fund or quasi-endowment fund restricted as to use; and

(*3*) There is an independent verification (e.g., from an independent certified public accountant) that the fund is reasonably necessary as part of the organization's permanent capital.

Par. 17. Section 1.148–9 is amended as follows:

1. Paragraph (c)(2)(ii)(B) is revised.

2. Paragraph (h)(4)(vi) is added.

3. The revised and added provisions read as follows:

§ 1.148–9 Arbitrage rules for refunding issues.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) *Permissive allocation of non-proceeds to earliest expenditures.* See § 1.148–9T(c)(2)(ii)(B).

* * * * *

(h) * * *

(4) * * *

(vi) See § 1.148–9T(h)(4)(vi).

* * * * *

Par. 18. Section 1.148–9T is added to read as follows:

§ 1.148–9T Arbitrage rules for refunding issues (temporary).

(a) through (c)(2)(ii)(A) [Reserved]. For guidance see § 1.148–9.

(c)(2)(ii)(B) *Permissive allocation of non-proceeds to earliest expenditures.* Excluding amounts covered by § 1.148–9(c)(2)(ii)(A) and subject to any required earlier expenditure of those amounts, any amounts in a mixed escrow that are not proceeds of a refunding issue may be allocated to the earliest maturing investments in the mixed escrow, provided that those investments mature and the proceeds thereof are expended before the date of any expenditure from the mixed escrow to pay any principal of the prior issue.

(d) through (h)(4)(v) [Reserved]. For guidance see § 1.148–9.

(h)(4)(vi) *Exception for refundings of interim notes.* Section 1.148–9(h)(4)(v) need not be applied to refunding bonds issued to provide permanent financing for one or more projects if the prior issue had a term of less than 3 years and was sold in anticipation of permanent financing, but only if the aggregate term of all prior issues sold in anticipation of permanent financing was less than 3 years.

Par. 19. Section 1.148–10 is amended as follows:

1. Paragraph (b)(2) is revised.

2. A sentence is added at the end of paragraph (c)(2)(ix).

3. The added and revised provisions read as follows:

§ 1.148–10 Anti-abuse rules and authority of Commissioner.

* * * * *

(b) * * *

(2) *Application.* See § 1.148–10T(b)(2).

(c) * * *

(2) * * *

(ix) * * * See also § 1.148–10T(c)(2)(ix).

* * * * *

Par. 20. Section 1.148–10T is added to read as follows:

§ 1.148–10T Anti-abuse rules and authority of Commissioner (temporary).

(a) through (b)(1) [Reserved]. For guidance see § 1.148–10.

(b)(2) *Application.* The provisions of § 1.148–10(b) only apply to the portion of an issue that, as a result of actions taken (or actions not taken) after the issue date, overburdens the market for tax-exempt bonds, except that for an issue that is reasonably expected as of the issue date to overburden the market, those provisions apply to all of the gross proceeds of the issue.

(c) through (c)(2)(viii) [Reserved]. For guidance see § 1.148–10.

(c)(2)(ix) For purposes of § 1.148–10(c)(2), excess gross proceeds do not include gross proceeds allocable to fees for a qualified hedge for the refunding issue.

Par. 21. Section 1.148–11 is amended by adding paragraph (i) to read as follows:

§ 1.148–11 Effective dates.

* * * * *

(i) *Transition rule for certain amendments.* See § 1.148–11T(i).

Par. 22. Section 1.148–11T is added to read as follows:

§ 1.148–11T Effective dates (temporary).

(a) through (c)(3) [Reserved]. For guidance see § 1.148–11.

(c)(4) *Retroactive application of overpayment recovery provisions.* An issuer may apply the provisions of § 1.148–3(i) to any issue that is subject to section 148(f) or to sections 103(c)(6) or 103A(i) of the Internal Revenue Code of 1954.

(d) through (h) [Reserved]. For guidance see § 1.148–11.

(i) *Transition rule for certain amendments.* Sections 1.103–8(a)(5), 1.148–1 through 1.148–11, 1.149(d)–1, and 1.150–1, as amended on June 6, 1994 (the effective date) to reflect amendments to §§ 1.103–8(a)(5), 1.148–1 through 1.148–11, 1.149(d)–1, and 1.150–1 (as contained in 26 CFR Part 1 edition revised April 1, 1994), and sections 1.103–6T, 1.148–1T, 1.148–2T, 1.148–3T, 1.148–4T, 1.148–5T, 1.148–6T, 1.148–9T, 1.148–10T, 1.148–11T, 1.149(d)–1T, and 1.150–1T apply in whole, but not in part,—

(1) To bonds sold after the effective date;

(2) To bonds issued prior to July 1, 1993, if the issuer, after the effective date, first applies §§ 1.148–1 through 1.148–11, to the bonds under § 1.148–11 (b) or (c); and

(3) At the option of the issuer, to bonds to which §§ 1.148–1 through 1.148–11, as in effect before the effective date, apply.

Par. 23. In § 1.149(d)–1, paragraph (f)(3) is revised to read as follows:

§ 1.149(d)–1 Limitations on advance refundings.

* * * * *

(f) * * *

(3) *Application of savings test to multipurpose issues.* See § 1.149(d)–1T.

* * * * *

Par. 24. Section 1.149(d)–1T is added to read as follows:

§ 1.149(d)–1T Limitations on advance refundings (temporary).

(a) through (f)(2) [Reserved]. For guidance see § 1.149(d)–1.

(f)(3) *Application of savings test to multipurpose issues.* Except as otherwise provided in this paragraph (f)(3), the multipurpose issue rules in § 1.148–9(h) apply for purposes of the savings test. If any separate issue in a multipurpose issue increases the aggregate present value debt service savings on the entire multipurpose issue or reduces the present value debt service losses on that entire multipurpose issue, that separate issue satisfies the savings test.

Par. 25. Section 1.150–1 is amended as follows:

1. Paragraph (c)(1) is revised.
2. The paragraph heading for (c)(4) is revised.
3. Paragraph (c)(4)(iii) is added.
4. The revised and added provisions read as follows:

§ 1.150–1 Definitions.

* * * * *

(c) *Definition of issue*—(1) *In general.* See § 1.150–1T(c)(1).

* * * * *

(4) *Special rules for certain financings*—(i) * * *

* * * * *

(iii) See § 1.150–1T(c)(4)(iii).

* * * * *

Par. 26. Section 1.150–1T is added to read as follows:

§ 1.150–1T Definitions (temporary).

(a) through (b) [Reserved]. For guidance see § 1.150–1.

(c) *Definition of issue*—(1) *In general.* Except as otherwise provided, the provisions of this paragraph (c) apply for all purposes of sections 103 and 141 through 150. Except as otherwise provided in this paragraph (c), two or more bonds are treated as part of the same issue if all of the following factors are present:

(i) *Sold at substantially the same time.* The bonds are sold at substantially the same time. Bonds are treated as sold at substantially the same time if they are sold less than 15 days apart. For this purpose only, a variable yield bond is treated as sold on its issue date.

(ii) *Sold pursuant to the same plan of financing.* The bonds are sold pursuant to the same plan of financing. Factors material to the plan of financing include the purposes for the bonds and the structure of the financing. For example, generally—

(A) Bonds to finance a single facility or related facilities are part of the same plan of financing;

(B) Short-term bonds to finance working capital expenditures and long-term bonds to finance capital projects are not part of the same plan of financing; and

(C) Certificates of participation in a lease and general obligation bonds secured by tax revenues are not part of the same plan of financing.

(iii) *Payable from same source of funds.* The bonds are reasonably expected to be paid from substantially the same source of funds, determined without regard to guarantees from parties unrelated to the obligor.

(2) through (4)(ii) [Reserved]. For guidance see § 1.150–1 (c)(3) through (c)(4)(ii).

(c)(4)(iii) *Certain general obligation bonds.* Bonds are part of the same issue if secured by a pledge of the issuer's full faith and credit (or a substantially similar pledge) and sold and issued on the same dates pursuant to a single offering document.

(5) [Reserved]. For guidance see § 1.150–1(c)(5).

(6) *Sale date.* The sale date of a bond is the first day on which there is a binding contract in writing for the sale or exchange of the bond.

Dated: April 14, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 94–11104 Filed 5–5–94; 2:17 pm]

BILLING CODE 4830–01–U

Fiscal Service

31 CFR Part 347

[Department of the Treasury Circular, Public Debt Series No. 22–75]

Regulations Governing 2 Percent Treasury Bonds—REA Series

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends Title 31 by removing Part 347. The action is being taken because all outstanding 2 Percent Treasury Bonds—REA Series, have been redeemed and such bonds are no longer being offered.

EFFECTIVE DATE: May 10, 1994.

FOR FURTHER INFORMATION CONTACT: Fred Pyatt, Director, Division of Special Investments, Bureau of the Public Debt, Parkersburg, WV (304) 480–7752.

SUPPLEMENTARY INFORMATION: Department of the Treasury Circular, Public Debt Series, No. 22–75, dated July 10, 1975, provides for the offering of 2 Percent Treasury Bonds—REA Series. 2 Percent Treasury Bonds—REA Series are offered by the Department of the Treasury to borrowers from the Rural Electrification Administration, U.S. Department of Agriculture. The bonds bear an interest rate of 2 percent per annum, payable on a semi-annual basis, and mature 12 years from the issue date.

All outstanding 2 Percent Treasury Bonds—REA Series have been redeemed by the Department of the Treasury and the REA has terminated the bond program. Accordingly, part 347, which sets the terms for the offering of these securities, is unnecessary and, therefore, should be removed from Title 31 of the CFR.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply. Because this final rule relates to public contracts and procedures for United States securities, the notice, public comment and effective date requirements of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) are inapplicable. As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply. There are no collections of information required by this final rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 347

Banks, Banking, Bonds, Electronic funds transfer, Government securities.

PART 347—[REMOVED]

Accordingly, under the authority at 31 U.S.C. 3105 and 5 U.S.C. 301, 31 CFR Part 347 is hereby removed.

Dated: May 3, 1994.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 94–10926 Filed 5–9–94; 8:45 am]

BILLING CODE 4810–39–W

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Jacksonville 94–056]

RIN 2115–AA97

Security Zone Regulations; Port Canaveral, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 500 yard moving security zone around HMS VANGUARD while the vessel is underway in U.S. waters in the vicinity of Port Canaveral Florida. The vessel will make multiple entries and exits into Port Canaveral Florida between April 21 and August 15, 1994. The zone is needed to safeguard HMS VANGUARD against destruction from sabotage or other subversive acts, accidents, or other causes of a similar nature while the vessel transits through the Port Canaveral Entrance Channel to and from the East Basin in Port Canaveral, Florida. Entry into this zone is prohibited unless authorized by the Captain of the Port Jacksonville, Florida.

EFFECTIVE DATES: This regulation becomes effective on April 21 and terminates August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Varamo, MSO Jacksonville, FL at Tel: (904) 232–2648.

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

Drafting Information

The drafters of this regulation are Lieutenant A. Varamo, project officer for the Captain of the Port, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is the arrival and departure of HMS VANGUARD into U.S. waters enroute to Port Canaveral, Florida. The vessel is scheduled to make multiple entries and exits into the Port of Canaveral between April 21 and August 15, 1994. A security zone is necessary to safeguard HMS VANGUARD from sabotage, or other subversive acts, accidents, or other causes of a similar nature within U.S. Waters. The Security Zone will be enforced by representatives of the Captain of the Port Jacksonville, Florida. The Captain of the Port may be assisted by other federal agencies and civil law enforcement authorities.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of Part 165.

Federalism

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

Environmental Assessment

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

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The moving security zone extends 500 yards in all directions around the HMS

VANGUARD when the vessel enters U.S. territorial seas. The security zone remains in effect as long as the vessel is underway in U.S. waters and terminates upon arrival at the East Basin, Port Canaveral, Florida. Upon departure, the 500 yard moving security zone shall be in effect until the vessel transits beyond the U.S. territorial seas, unless terminated earlier by the Captain of the Port Jacksonville, Florida.

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

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

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

2. A new § 165.T07–056 is added to read as follows:

§ 165.T07–056 Security Zone: Port Canaveral Entrance Channel.

(a) *Location.* The following area is a Security Zone: All waters 500 yards in all directions around HMS VANGUARD as it transits to and from the Port Canaveral East Basin through the Port Canaveral Entrance Channel. The security zone will remain in force while the vessel is underway in U.S. waters.

(b) *Effective date.* This section becomes effective two hours prior to arrival and departure of the vessel in U.S. waters. The vessel is expected to make multiple entries and exits into the Port of Canaveral between April 21 and August 15, 1994. It remains in effect as long as HMS VANGUARD is underway in U.S. waters and terminates upon arrival at the East Basin in Port Canaveral, or on departure, transits beyond the U.S. territorial seas, unless terminated earlier by the Captain of the Port Jacksonville, FL. Commencement of this Security zone will be announced in a Local Broadcast Notice to Mariners immediately prior to arrival into U.S. waters.

(c) *Regulation.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) This regulation does not apply to United States Naval vessels or other authorized law enforcement agencies operating within the Security Zone.

Dated: April 21, 1994.

D.F. Miller,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Jacksonville, Florida.

[FR Doc. 94–11224 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Wilmington, NC 94–002]

Safety Zone Regulations; Masonboro Inlet, Wrightsville Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Masonboro Inlet in the vicinity of Wrightsville Beach, North Carolina. The safety zone is needed to protect people, vessels, and property from safety hazards associated with dredge operations being conducted by the U.S. Army Corps of Engineers near Masonboro Inlet. Entry into this zone is prohibited unless authorized by the Captain of the Port, Wilmington, North Carolina, or his designated representative.

EFFECTIVE DATES: This regulation is effective from 12:01 a.m., on April 27, 1994 to 11:59 p.m., on June 15, 1994, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

FOR FURTHER INFORMATION CONTACT: LCDR M.L. BLAIR, USCG, c/o U.S. Coast Guard Captain of the Port, Suite 500, 272 N. Front Street, Wilmington, North Carolina 28401–3907, Phone: (910) 343–4881.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would not have been possible since the conditions warranting the establishment of this safety zone were not realized until April 26, 1994.

Drafting Information

The drafters of this regulation are LTJG G.A. HOWARD, project officer for the Captain of the Port, Wilmington, North Carolina, and LT M.L. LOMBARDI, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

On April 26, 1994, the U.S. Army Corps of Engineers requested that the Coast Guard provide a safety zone for the dredge operations they are conducting in the Masonboro Inlet. The dredge operations are ongoing 24 hours a day in shallow water areas frequented by the surfing community. The strong suction of the dredge poses a great danger to the surfers, as well as small watercraft. Additionally, dangers are posed by the increased traffic caused by vessels supporting the dredge operation. This safety zone is needed to protect the public from the potential hazards near the dredge operation. It will consist of an area of water within a radius of 100 yards, surrounding the Dredge Alaska.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Federalism Assessment

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

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

Regulation

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

PART 165—[AMENDED]

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

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

2. A new § 165.T05–024 is added, to read as follows:

§ 165.T05–024 Safety Zone: Masonboro Inlet Dredge Operations, Masonboro Inlet, Onslow Bay, Vicinity of Wrightsville Beach, North Carolina.

(a) *Location.* The following area is a safety zone:

(1) The waters of Onslow Bay and Masonboro Inlet circumscribed by a radial line drawn from the centerpoint of the Dredge Alaska for 100 yards in all directions.

(b) *Effective date.* This section is effective from 12:01 a.m. April 27, 1994 to 11:59 p.m. on June 15, 1994, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

(c) *Local regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Any person or operator of any vessel in the immediate vicinity of this safety zone shall proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(d) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Wilmington, North Carolina, to act on his behalf.

(e) *Points of contact.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina, can be contacted at telephone number (910) 343–4895. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 81.

Dated: April 26, 1994.

C.F. Eisenbeis,

Captain, Coast Guard Captain of the Port, Wilmington, NC.

[FR Doc. 94–11288 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG59

Veterans Education; Clarification of Eligibility Requirements for the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final rules.

SUMMARY: Generally, someone who receives a commission upon graduating from a service academy or who receives a commission upon completion of a program of educational assistance under the Reserve Officers Training Corps Scholarship Program is not eligible for educational assistance under the Montgomery GI Bill—Active Duty. However, this does not apply to those who already had established entitlement under this program before being commissioned. These amended regulations will make this policy clear to the public.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–233–2092.

SUPPLEMENTARY INFORMATION: On pages 50873 through 50875 of the **Federal Register** of September 29, 1993, there was published a Notice of Intent to amend 38 CFR part 21 in order to clarify certain eligibility requirements for the Montgomery GI Bill—Active Duty. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Accordingly, VA is making the regulations final.

Generally, someone who, after December 31, 1976, receives a commission upon graduating from a service academy or who receives a commission upon completion of a program of educational assistance under the Reserve Officers Training Corps Scholarship Program is not eligible for educational assistance under the Montgomery GI Bill—Active Duty. However, this does not apply to those who already had established entitlement under this program before being commissioned.

For example, there have been instances where someone established entitlement under the Montgomery GI Bill—Active Duty by entering active duty as an enlisted person after June 30, 1985; having his or her pay reduced by $1200; and serving for at least two years. Then the servicemember was chosen to attend a service academy. Upon graduation from the academy the individual sought educational assistance under the Montgomery GI Bill—Active Duty. By amending the appropriate regulations it will be clear that these individuals maintain their eligibility for educational assistance.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Department of Veterans Affairs finds that good cause exists for making the amendments to §§ 21.7042 and 21.7044, like the provisions of law they implement, retroactively effective on July 1, 1985.

It is necessary to make the effective date of the regulations July 1, 1985. That date is the first date anyone could qualify for educational assistance under the Montgomery GI Bill—Active Duty. An effective date of July 1, 1985, will ensure that everyone who has filed a claim in the past and to whom these regulations apply would qualify for educational assistance.

The Catalog of Federal Domestic Assistance number for the program affected by these amended regulations is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 28, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart K is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501(a).

2. Section 21.7042 is amended by revising the introductory text in paragraph (f)(2) and adding paragraph (f)(3) and its authority citation to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(f) *Restrictions on establishing eligibility.* * * *

(2) Except as provided in paragraph (f)(3) of this section, an individual is not eligible for educational assistance under 38 U.S.C. ch. 30, if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces upon—

* * * * *

(3) Paragraph (f)(2) of this section does not apply to a veteran who has met the requirements for educational assistance under paragraph (a), (b) or (c) of this section before receiving a commission in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 3011, 3012, 3018)

* * * * *

3. Section 21.7044 is amended by revising paragraph (d), introductory text, and adding paragraph (e) and its authority citation to read as follows:

§ 21.7044 Persons with 38 U.S.C. ch. 34 eligibility.

* * * * *

(d) *Restrictions on establishing eligibility.* Except as provided in paragraph (e) of this section, an individual, who would otherwise be eligible for educational assistance under paragraphs (a) or (b) of this section, is not eligible for educational assistance under 38 U.S.C. ch. 30, if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces—

* * * * *

(e) *Exception to restrictions on establishing eligibility.* Paragraph (d) of this section does not apply to a veteran who has met the requirements for educational assistance under paragraph (a) or (b) of this section before receiving a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 3011, 3012, 3018)

[FR Doc. 94-11147 Filed 5-9-94; 8:45 am]

BILLING CODE 8320-01-P

38 CFR Part 21

RIN 2900-AF30

Veterans Benefits; Eligibility for the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1991 provides additional ways in which an individual may become eligible for the Montgomery GI Bill—Active Duty. These regulations will acquaint the public with the way in which VA (the Department of Veterans Affairs) will administer these new provisions of law.

EFFECTIVE DATE: The amendments to the following regulations, like the sections of law they implement, are retroactively effective on October 19, 1984: §§ 21.7042(a)(5) (v) and (vi), 21.7042(b)(6) (v) and (vi), 21.7042(b)(7)(i)(E) and (F), 21.7044(a)(4)(ii)(E) and (F), 21.7044(b)(7)(v) and (vi), 21.7044(b)(8)(i)(E) and (F) and 21.7072(b)(1)(iii) (D) and (E). The amendments to the remainder of the regulations, as well as the new sections §§ 21.7045 and 21.7073, like the sections of law they implement, are retroactively effective on November 5, 1990.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202-233-2092.

SUPPLEMENTARY INFORMATION: On pages 39488 through 39493 of the **Federal Register** of July 23, 1993, there was published a notice of intent to amend 38 CFR part 21 in order to implement those provisions of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510) which affect the Montgomery GI Bill—Active Duty. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections.

In the proposal VA would have redesignated several sections and adopted a new § 21.7073. However, after considering the fact that there are references to the current §§ 21.7073, 21.7074 and 21.7075 in various VA publications, all of which would have to be revised, VA has decided instead to include the material which was proposed as a new § 21.7073 in the current § 21.7073. This made many of the revisions which were proposed to § 21.7072 unnecessary since those revisions merely inserted references to the newly designated sections. The current §§ 21.7074 and 21.7075 will retain their present designations. None of the changes from the proposal are substantive. VA is adopting the remainder of the proposal without change.

Sections 561, 562 and 563 of Public Law 101-510 contain provisions that will enable additional individuals to become eligible for the Montgomery GI Bill—Active Duty. This is done both by creating a new class of eligible veterans and by providing an additional type of discharge which will qualify veterans for the program. These regulations implement these sections of the act.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA finds that good cause exists for making the amendments to §§ 21.7042(a)(5), 21.7042(b)(6), 21.7042(b)(7), 21.7044(a)(4), 21.7044(b)(7), 21.7044(b)(8) and 21.7072(b)(1), like the provision of law they implement, retroactively effective on October 19, 1984. VA finds that good cause exists for making the remainder of the amendments as well as the new sections, §§ 21.7045 and 21.7073a, like the provisions of law they implement, retroactively effective on November 5, 1990. These regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number for this program is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans,

Vocational education, Vocational rehabilitation.

Approved: April 28, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart K is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501.

2. In § 21.7020 paragraph (b)(1)(iii) and its authority citation are added to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) *Other definitions.*

(1) * * *

(iii) When referring to individuals who, before November 30, 1989, had never served on active duty (as that term is defined by § 3.6b of this title), the term "active duty" when used in this subpart includes full-time National Guard duty first performed after November 29, 1989, by a member of the Army National Guard of the United States or the Air National Guard of the United States in the servicemember's status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing or training the National Guard.

(Authority: 38 U.S.C. 3002(7); Pub. L. 101–510, sec. 563(b)) (Nov. 5, 1990)

* * * * *

3. In § 21.7042 the introductory text is revised and its authority citation is added; paragraph (a)(5)(v) is revised, paragraph (a)(5)(vi) is added and the authority citation for paragraph (a) is revised; paragraph (b)(6)(v) is revised, paragraph (b)(6)(vi) is added and an authority citation for paragraph (b)(6) is added; paragraph (b)(7)(i)(E) is revised, paragraph (b)(7)(i)(F) and an authority citation for paragraph (b)(7)(i) are added and paragraph (f)(1) is revised and the authority citation for paragraph (f)(1) is revised to read as follows:

§ 21.7042 Basic eligibility requirements.

An individual must meet the requirements of this section, § 21.7044 or § 21.7045 in order to be eligible for basic educational assistance. In determining whether an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for the periods of time specified in § 3.15.

(Authority: 38 U.S.C. 3011, 3012, 3018A; Pub. L. 101–510) (Nov. 5, 1990)

* * * * *

(a) *Eligibility based solely on active duty.* * * *

(5) * * *

(v) Involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(b) *Eligibility based on active duty service and service in the Selected Reserve.*

(6) * * *

(v) Involuntarily, for convenience of the Government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(7) * * *

(i) * * *

(E) Involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

* * * * *

(f) *Restrictions on establishing eligibility.* (1) An individual who, after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. ch. 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. ch. 30 unless he or she withdraws the election as provided in paragraph (c) of this section or in § 21.7045(b) of this part.

(Authority: 38 U.S.C. 3018, 3018A; Pub. L. 100–689, Pub. L. 101–510) (Nov. 5, 1990)

* * * * *

4. In § 21.7044 paragraph (a)(4)(ii)(E) is revised, paragraph (a)(4)(ii)(F) is added and the authority citation for paragraph (a)(4) is revised; paragraph (b)(7)(v) is revised and paragraph (b)(7)(vi) and an authority citation for paragraph (b)(7) are added; paragraph (b)(8)(i)(E) is revised and paragraph (b)(8)(i)(F) and an authority citation for paragraph (b)(8)(i) are added to read as follows:

§ 21.7044 Persons with 38 U.S.C. ch. 34 eligibility.

* * * * *

(a) *Eligibility based solely on active duty.* * * *

(4) * * *

(ii) * * *

(E) Involuntarily for convenience of the government as a result of a

reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or;

(F) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

* * * * *

(b) *Eligibility based on combined active duty service and service in the Selected Reserve.*

* * * * *

(7) * * *

(v) Involuntarily, for the convenience of the government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3012; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(8) * * *

(i) * * *

(E) Is discharged involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) Is discharged for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy; or

(Authority: 38 U.S.C. 3012; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

* * * * *

5. Section 21.7045 and its authority citations are added to read as follows:

§ 21.7045 Eligibility based on involuntary separation.

An individual who fails to meet the eligibility requirements found in § 21.7042 or § 21.7044 nevertheless will be eligible for educational assistance if he or she meets the requirements of this section.

(a) *Service requirements.* The individual must—

(1) Be on active duty or full-time National Guard duty on September 30, 1990, and

(2) After February 2, 1991, be involuntarily separated, as that term is defined in 10 U.S.C. 1141, with an honorable discharge.

(Authority: 10 U.S.C. 1141, 38 U.S.C. 3018A; Pub. L. 101–510) (Nov. 5, 1990)

(b) *Required election.* (1) If the individual elected not to receive educational assistance under 38 U.S.C. ch. 30, as provided in § 21.7042(f), he or she must irrevocably withdraw that election. The withdrawal must—

(i) Occur before the involuntary separation, and

(ii) Be pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation shall provide with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) If the individual is a participant in the educational program provided in 38 U.S.C. ch. 32, the individual must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30 rather than under 38 U.S.C. ch. 32. Such an election must—

(i) Occur before the individual is involuntarily separated, and

(ii) Be pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation shall provide with respect to the Coast Guard when it is not operating as a service in the Navy.

(3) If the individual is not described in either paragraph (b)(1) or (b)(2) of this section, he or she must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30. This election must—

(i) Occur before the individual is involuntarily separated, and

(ii) Be pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation shall provide with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3018A(a); Pub. L. 101–510) (Nov. 5, 1990)

(c) *Reduction in basic pay.* The basic pay of anyone who makes one of the irrevocable elections described in paragraph (b) of this section must be reduced by $1,200. If through error or other reason the basic pay of an individual described in paragraphs (a) and (b) of this section is not reduced by $1,200, the failure to make the reduction will not affect the individual's eligibility for educational assistance under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 3018A(b); Pub. L. 101–510) (Nov. 5, 1990)

(d) *Educational requirement.* (1) Before the date on which VA receives the individual's application for benefits, the individual must have completed successfully either—

(i) The requirements of a secondary school diploma (or equivalency certificate), or

(ii) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(2) If a veteran has not met the requirements of paragraph (d)(1) of this section at the time of his or her application for educational assistance, he or she will be permitted to apply at a later date after those requirements are met.

(Authority: 38 U.S.C. 3018A(a); Pub. L. 101–510) (Nov. 5, 1990)

6. In § 21.7072 paragraph (b)(1)(iii)(D) is revised, paragraph (b)(1)(iii)(E) is added and the authority citation for paragraph (b)(1) is revised to read as follows:

§ 21.7072 Entitlement to basic educational assistance.

* * * * *

(b) *Entitlement: individual discharged for service-connected disability, a medical condition which preexisted service, hardship or involuntarily for the convenience of the government as a result of a reduction in force.* (1) * * *

(iii) * * *

(D) Involuntarily for convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or;

(E) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3013(a))

* * * * *

7. Section 21.7073 is revised to read as follows:

§ 21.7073 Entitlement for some individuals who establish eligibility during the open period or who establish eligibility before involuntary separation.

(a) *Individuals who establish eligibility during the open period.* (1) The provisions of this paragraph apply to a veteran or servicemember who:

(i) Establishes eligibility by withdrawing an election not to enroll as provided in § 21.7042(c);

(ii) Has less than $1,200 deducted from his or her military pay; and

(iii) Before completing the period of service which the individual was obligated to service on December 1, 1988, the individual:

(A) Is discharged or released from active duty for a service-connected disability, a medical condition which preexisted that service, or hardship; or

(B) Is discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service, if that period was less than three years, or 30 months, if that period was at least three years; or

(C) Is involuntarily discharged or released from active duty for convenience of the Government as a result of a reduction in force, as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3301(c))

(2) A veteran described in paragraph (a)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of:

(i) A number of months determined by multiplying 36 by a fraction the numerator of which is the amount by which the basic pay of the individual has been reduced as provided in § 21.7042(e)(2) and the denominator of which is $1,200, or

(ii) The number of months the veteran has served on continuous active duty after June 30, 1985.

(Authority: 38 U.S.C. 3013(c))

(b) *Individuals who establish eligibility following involuntary separation.* (1) The provisions of this paragraph apply to a veteran who establishes eligibility by meeting the provisions of § 21.7045 of this part.

(Authority: 38 U.S.C. 3018A)

(2) A veteran described in paragraph (b)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of—

(i) 36 months, or

(ii) The number of months the veteran served on active duty.

(Authority: 38 U.S.C. 3013)

8. In § 21.7136 paragraph (a)(1) and its authority citation are revised, the introductory text of paragraph (c) is revised, and paragraphs (d) (1) and (2) and (e) and the authority citations for paragraphs (d) and (e) are added to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

(a) *Rates.* (1) Except as otherwise provided in this section and § 21.7137, the monthly rate of the basic educational assistance payable to a veteran is the rate stated in these tables. The rates in these tables and the other rates in this paragraph also apply to a veteran who formerly was eligible under 38 U.S.C. ch. 34, and who has received a record-purpose charge against his or her entitlement under that chapter equal to the entitlement he or she had remaining on December 31, 1989. The rates in these tables as well as the other rates listed in this paragraph always apply to a veteran who establishes eligibility under § 21.7045 before an involuntary separation, regardless of the length of the veteran's initial obligated period of active duty or whether or not the veteran was once eligible for educational assistance allowance under 38 U.S.C. ch. 34.

(i) For training which occurred before October 1, 1991, the following table applies.

Training	Monthly rate
Full time	$300.
¾ time	225.
½ time	150.
Less than ½ but more than ¼ time.	150 See § 21.7136 (d) or (e).
¼ time	75 See § 21.7136 (d) or (e).

(ii) For training which occurs after September 30, 1991, the following table applies.

Training	Monthly rate
Full time	$350.00.
¾ time	262.50.
½ time	175.00.
Less than ½ but more than ¼ time.	175.00 See § 21.7136 (d) or (e).
¼ time or less	87.50 See § 21.7136 (d) or (e).

(Authority: 38 U.S.C. 3015)

* * * * *

(c) *Increase in basic educational assistance rates ("kicker").* The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but (except as provided in paragraph (e) of this section)—

* * * * *

(d) *Less than one-half-time training and rates for servicemembers.* The monthly rate for a veteran who is pursuing a course on a less than one-half time basis or the monthly rate for a servicemember who is pursuing a program of education is the lesser of—

(1) The monthly rate stated in either paragraph (a) or (b) of this section (as determined by the veteran's or servicemember's initial obligated period of active duty) plus any additional amounts that may be due under paragraph (c) or (e) of this section, or

(2) The monthly rate of the cost of the course.

* * * * *

(Authority: 38 U.S.C. 3015, 3032)

(e) *Increase in basic educational assistance rates ("kicker") for those*

eligible under § 21.7045. A veteran who formerly was eligible to receive educational assistance under 38 U.S.C. ch. 32, and becomes eligible for educational assistance under 38 U.S.C. ch. 30 as described in § 21.7045(b)(2), may receive an increase in basic educational assistance allowance (kicker). The increase will be determined as follows.

(1) The basis of the increase will be that portion of the amount of money—

(i) Which remains in the VEAP fund after the veteran has been paid all assistance due him or her under 38 U.S.C. ch. 32 and refunded all of his or her contributions to the VEAP fund, and—

(ii) Which represents the Secretary of Defense's additional contributions for the veteran as stated in § 21.5132(b)(3) of this part.

(2) For a student pursuing a program of education by residence training—

(i) VA will determine the monthly rate of the increase by dividing the amount of money described in paragraph (e)(1) of this section by the number of months of entitlement to educational assistance under 38 U.S.C. chapter 30 which the veteran has at the time his eligibility for benefits under 38 U.S.C. chapter 30 is first established;

(ii) VA will use the monthly rate of the increase determined in paragraph (e)(2)(i) of this section if the veteran is pursuing his or her program full time;

(iii) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .75 for a student pursuing his or her program three-quarter time;

(iv) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .5 for a student pursuing his or her program half time; and

(v) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .25 for a student pursuing his or her program less than one-half time.

(3) For a veteran pursuing cooperative training VA will multiply the rate determined by paragraph (e)(2)(i) of this section by .8.

(4) For a veteran pursuing a program of apprenticeship or other on-job training VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section

(i) By .75 for a veteran in the first six months of pursuit of training,

(ii) By .55 for a veteran in the second six months of pursuit of training, and

(ii) By .35 for a veteran in the remaining months of pursuit of training.

(Authority: 38 U.S.C. 3015(e))

[FR Doc. 94–11079 Filed 5–9–94; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL–4883–6]

State Implementation Plan Processing Reform

AGENCY: Environmental Protection Agency (EPA).

ACTION: Procedural change.

SUMMARY: This document describes changes being implemented as a method for handling direct final State implementation plan (SIP) actions. Presently, when the Regional Offices publish direct final SIP actions in the **Federal Register**, if adverse comments are submitted on these actions or notification is received that adverse comments are going to be submitted, the Regional Office writes and publishes another document which withdraws the direct final action. After the direct final action has been withdrawn, the Regional Office prepares a third document which serves as the proposal, and then a fourth document is written and published for promulgation.

Under the revised procedure, when the direct final is published in the **Federal Register**, a short informational document will be published, simultaneously, in the proposal section of the **Federal Register**. The purpose of the informational document is to inform the public of the direct final, and states that if adverse comments are received, a withdrawal notice will be published in the **Federal Register**, then the substance of the direct final document will serve as a proposed rule action. If such comments are received, the direct final document serves as the detailed basis for the proposal, and the adverse comments will be addressed in the promulgation document. If no such comments are received, the direct final stands "as is" and no additional action will need to be taken by the Regional Office. This revised procedure eliminates the need for a new proposed rule and an additional comment period, and assists in getting these SIP actions published in a more expedient manner.

EFFECTIVE DATE: This action is effective on May 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry M. Stubberfield, Acting Branch Chief, Regional Operations Branch, Air Quality Management Division, Office of Air Quality Planning and Standards, MD–15, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–0876.

SUPPLEMENTARY INFORMATION:

Background

Recommendation for improving SIP processing at EPA has been presented and approved in full to the Deputy Administrator (memorandum from Gerald A. Emison, Director, Office of Air Quality Planning and Standards, to the Air Program Director, Regions I–X, dated December 23, 1987). An intra-agency work group took necessary action to put these wide-ranging recommendations into place. One recommendation involved the expanded use of direct final rulemaking procedures. The recommendation concerned not only more frequent use of direct final where appropriate but also more aggressive application of the concept. Consequently, it is policy to achieve increased use of direct final processing consistent with previously published criteria.

Proposed in 1981 and finalized in 1982 (46 FR 44477, September 4, 1981 and 47 FR 27073, June 23, 1982), direct final rulemaking has been used to great advantage by several Regional Offices in the intervening years. Under our current direct final procedures, SIP actions that are noncontroversial, and where no adverse public comments are expected, can be processed as direct final rules. This type of processing has been demonstrated to cut the review time in half. Since its inception, hundreds of changes have progressed to direct final, with very few engendering any adverse public comment (which under existing procedures would require withdrawal of the change, followed by full review and comment processing).

This history of very little public intervention suggests that we are not using, as we might, an effective tool for speeding review and decision making on SIP's. During these 3 years, only 2 of 134 packages were withdrawn because of adverse comments.

A wide variety of SIP actions can be candidates for direct final, the primary criteria being that the action be noncontroversial and that no adverse public comment is anticipated. These actions do not have to be limited to trivial administrative changes. Although the risk of aggressive action is a possible increase in the number of SIP's drawing comment, this risk should be more than offset by the expected improvement in timely processing and in numbers processed, without jeopardizing air quality.

Dated: May 2, 1994.

Steven J. Hitte,

Acting Director, Air Quality Management Division.

[FR Doc. 94–11275 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300320A; FRL–4777–5]

RIN 2070–AB78

d-Limonene; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of d-limonene (CAS Registry No. 5989-27-5) when used as an inert ingredient (solvent, fragrance) in pesticide formulations applied to growing crops or raw agricultural commodities after harvest, or to animals.

EFFECTIVE DATE: This regulation becomes effective May 10, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number [OPP-300320A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Opearations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: Tina Levine, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Dr., 6th Fl., North Tower, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 23, 1994 (59 FR 8581), EPA issued a proposed rule that gave notice that Orange Sol, Inc., 955 N. Fiesta Blvd., Suite #1, Gilbert, AZ 85234, had submitted pesticide petition (PP) 3E4172 requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of d-limonene (CAS Registry No. 5989-275) when used as an inert ingredient (solvent, fragrance) in pesticide formulations applied to growing crops only or raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Two comments were received in response to the proposed rule. One commenter noted that d-limonene is toxic by ingestion and that, since most pesticides do not smell like oranges, special labeling should be used to warn the public about this special hazard. In addition, this commenter was concerned about potential kidney toxicity of d-limonene and did not believe that it should be allowed in unlimited amounts in pesticides, noting that the American Industrial Hygiene Association (AIHA) had established an 8-hour time-weighted Workplace Environmental Exposure Level (WEEL) for d-limonene of 30 parts per million, primarily on the basis of toxicity to the kidney. The commenter also noted that the Agency should determine whether d-limonene is functioning as an active ingredient as well, and that if it is functioning as an active ingredient, it should be registered. The commenter included a fact sheet on d-limonene which discussed the concerns noted in the response letter.

The Agency considered the toxicity data on d-limonene before proposing the exemption from tolerance. The acute toxicity of d-limonene (LD_{50} = 4.4 g/kg in rats and 5.6 g/kg in mice) puts it in the category of moderately to slightly toxic. The commenter noted that the acute toxicity of d-limonene would require it to be labeled to prevent ingestion by children under the Hazardous Substances Act. The Agency uses the same labeling criteria to label products under FIFRA. All end-use pesticide products are tested for acute toxicity. Labeling for the product is based upon the results of this testing. If a product containing d-limonene is acutely toxic, it will be labeled appropriately.

The Agency also considered the issue of allowing a food fragrance in a pesticide before developing this exemption. In 1975, a policy was established in the Registration Division which essentially prohibited the use of food or food-like fragrances in certain pesticide formulations (Standards and Labeling Policy Notice No. 2155.1, November 20, 1975). The policy was based on the premise that food or food-like fragrances in pesticide formulations "could be attractive to children and constitute an unwarranted hazard." A review of the benefits of this policy concluded that there are no scientific data which demonstrate that the addition of a food or food-like fragrance to a pesticide formulation increases the likelihood of accidental ingestion. The Consumer Product Safety Commission (CPSC) was also consulted to determine if they had addressed the effect of food or food-like fragrances on the exposure incidence of household products for children under 5 years of age. The CPSC has taken no regulatory action regarding the additions of such factors to household products because there is no evidence that the absence of such factors deters accidental ingestions. Pesticide product epidemiological data from the 1991 Annual Report of the American Association of Poison Control Centers National Data Collection System confirm that the absence of food or food-like fragrances in pesticide products is not effective in preventing/reducing the exposure incidence to pesticides for children under 5 years of age. Therefore, the Agency rescinded its 1975 policy.

The Agency also discussed the data it considered on kidney toxicity and tumor formation in the proposed rule. The demonstrated nephropathy and tumor formation produced by d-limonene has been related to alpha-2u-globulin accumulation specifically in the male rat. The Agency's position regarding compounds producing renal tubule tumors (in male rats) attributable solely to chemically induced alpha-2u-globulin accumulation is that these tumors will not be used for human cancer hazard identification and that the associated nephropathy is not an appropriate endpoint for determining noncancer risks in humans. This

position was described in the proposed rule.

AIHA decided to develop a WEEL for d-limonene because of its widespread use and in order to peer review the positive National Toxicology Program (NTP) tumor results in male rat kidney. In fact, the 30 ppm, 8-hour time-weighted WEEL developed by the AIHA was not based on kidney toxicity for the same reason that the Agency has decided not to use the male rat kidney data. The WEEL value was developed based on no-observed-effect levels (NOELs) in the 2-year NTP study where liver effects were noted in male mice at 500 mg/kg and reduced survival was noted in female rats at 600 mg/kg. The NOELs for these effects were 250 mg/kg and 300 mg/kg, respectively (AIHA, WEEL, d-Limonene, 1993). As discussed in the proposal, EPA considered these data in concluding that a tolerance was not necessary to protect the public health.

The Agency agrees with the commenter that when d-limonene functions as an active ingredient in a product, it should be regulated as such. The exemption from tolerance for d-limonene applies to its use as an inert ingredient only. If it is determined that d-limonene is acting as an active ingredient, it will be regulated as an active ingredient.

The other commenter endorsed the proposed rule and requested that it be expanded to include the use of d-limonene as an inert ingredient in pesticide formulations applied to animals. The data submitted in the proposal and other relevant material have been evaluated and discussed in the proposed rule. As stated in the proposed rule, the Agency believes that the data on d-limonene demonstrate low toxicity. For this reason, the Agency will expand the exemption for d-limonene to include its use as a fragrance or solvent in pesticide formulations applied to animals. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order. Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: April 26, 1994.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001 is amended in paragraphs (c) and (e) by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
d-Limonene (CAS Reg. No. 5989-27-5)		Solvent, fragrance.
* * * * * * *		

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* *
d-Limonene (CAS Reg. No. 5989-27-5)		Solvent, fragrance.
* * *	* * *	* *

[FR Doc. 94–11194 Filed 5–9–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 1E4031/R2058; FRL–4777–2]

RIN 2070–AB78

Pesticide Tolerance for 3-Dichloroacetyl-5-(2-Furanyl)-2,2-Dimethyl-Oxazolidine (Mon 13900)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances for residues of MON 13900, 3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine (CAS Reg. No. 121776-33-8), when used as an inert ingredient (safener) in or on field corn, grain and field corn, fodder and forage at 0.01 part per million (ppm). Monsanto Co. submitted a request to establish a maximum permissible level for residues of the inert ingredient in or on the commodities. These time-limited tolerances expire June 30, 1996.

EFFECTIVE DATE: This regulation becomes effective May 10, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1E4031/R2058], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th floor, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346. Section 408 authorizes EPA to establish tolerance levels and exemptions from the requirements of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities.

Inert ingredients of pesticide chemicals are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

A policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), included data requirements which were to be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. The minimal ("base set") data requirements for inert ingredients were listed in that policy statement. It was also noted that, based upon the results of the "base set" studies, the Agency may elect to require additional data such as would be required under 40 CFR part 158 for an active ingredient. Included among these additional requirements are residue chemistry data which would support the establishment of a finite tolerance for the residues of an inert ingredient in raw agricultural commodities and/or processed foods.

In those cases where the toxicity of an inert ingredient is such that exposure to the inert ingredient must be restricted to assure that the use of the inert ingredient in a pesticide formulation does protect the public health, EPA will propose to establish a tolerance for residues of the inert ingredient on raw agricultural commodities.

II. Provisions of Rule

Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, submitted pesticide petition (PP) 1E4031 proposing to amend 40 CFR part 180 by establishing a regulation to establish negligible (N) residue tolerances for the safener MON 13900, 3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine, in or on field corn, grain at 0.01 ppm (N) and field corn, fodder and forage at 0.01 ppm (N). A safener is a herbicidal antidote that protects desirous crops while allowing the herbicide to act on the intended weed targets. EPA issued a notice, published in the **Federal Register** of November 24, 1993 (58 FR 62123), announcing receipt of this petition. No comments were received in response to the notice.

The data submitted in the petitions and other relevant material have been evaluated. This inert ingredient is considered useful for the purpose for which the tolerance is sought. Toxicological, ecological, and environmental fate data were considered in evaluating this inert ingredient for use in pesticides. The data considered in support of the proposed tolerance include:

1. An acute rat oral toxicity study with an acute oral LD_{50} of 869 milligrams (mg)/kilogram (kg).

2. An acute rabbit dermal toxicity study with an acute dermal LD_{50} estimated to be >5,000 mg/kg.

3. A rabbit eye irritation study in which MON 13900 is determined to be a mild irritant to the ocular tissue of the rabbit.

4. An acute rat inhalation toxicity study with a 4-hour inhalation LC_{50} of >2.3 mg/L, the highest attainable concentration.

5. A rabbit primary dermal irritation study indicating that MON 13900 is a negligible dermal irritant.

6. A dermal sensitization study in guinea pigs indicating the MON 13900 does not produce delayed contact hypersensitivity.

7. A 21-day repeated-dose dermal toxicity study in rats with a no-observed effect level (NOEL) >1,000 mg/kg.

8. A 90-day rat oral toxicity study with a NOEL of 100 parts per million (ppm) or 7 mg/kg/day.

9. A 90-day dog oral toxicity study with a NOEL of 5 mg/kg/day.

10. A rat developmental effects study with a NOEL for maternal toxicity of 10 mg/kg/day and developmental toxicity of 10 mg/kg/day.

11. Mutagenicity studies including *in vivo/in vitro* unscheduled DNA synthesis in rat hepatocytes, Gene Mutation in Cultured Chinese Hamster Ovary Cells (CHO/HGPRT), *In Vivo* Micronucleus Assay in Mice were negative. Salmonella typhimurium/ mammalian microsome mutagenicity assay with and without metabolic activation indicated that MON 13900 induced a reproducible mutagenic response, but only at a high and precipitating dose.

A reference dose (RfD) has been established for this chemical at 0.005 mg/kg/day. This is based on the 90-day feeding study in dogs with a NOEL of 5.0 mg/kg/day, an uncertainty factor of 100 to account for inter-species and intra-species extrapolation, and an additional uncertainty factor of 10 to account for the extrapolation from subchronic to chronic exposure. The theoretical worst-case maximum residue contribution (TMRC) from the proposed tolerance is estimated to be 0.0000034 mg/kg-bwt (bodyweight)/day for the overall U.S. population, representing 0.07% of the RfD for MON 13900. The TMRC for the most highly exposed subgroup, nonnursing infants less than 1 year, is 0.0000009 mg/kg-bwt/day, or approximately 0.02% of the RfD.

This tolerance is being established as a time-limited tolerance because the Agency does not have final data from two chronic feeding/oncogenicity studies which are part of the toxicology data typically required to be submitted in support of a tolerance request. These studies will be required to be submitted to the Agency by June 30, 1995. When the Agency receives these chronic feeding/oncogenicity studies it will reassess the tolerance.

Preliminary information from the registrant has indicated that Mon 13900 can cause an increase in liver tumors in both sexes of rats and mice and an increase in lung tumors in female mice. The data are not available for a complete risk assessment but, nevertheless, certain conclusions can be reached. Based on the estimated exposure of 0.0000034 mg/kg/day, a rough estimate of the cancer potency from the preliminary data, and the limited duration of this tolerance, any potential cancer risk from this use would be negligible. Therefore, the Agency does not believe that this time-limited tolerance poses significant risks.

This tolerance will expire June 30, 1996. Residues not in excess of these tolerances will not be considered actionable if a pesticide containing this inert ingredient is legally applied during the term of a conditional registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended and in accordance with the acceptable labeling under a conditional registration. This tolerance will be revoked if any data indicate such revocation is necessary to protect the public health.

An analytical method for determination of the nature of the residue, gas-liquid chromatography using an electron-capture detector, has been reviewed by the Agency, and will be made available in the Pesticide Analytical Manual, Vol. II (PAM II), for enforcement purposes. In the interim, the method will be available at the address given below. By mail: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5937.

Based upon the above information considered by the Agency, the amendment to 40 CFR part 180 to establish the tolerance would protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance

requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: April 29, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.471 to subpart C, to read as follows:

§ 180.471 3-Dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine; tolerances for residues.

Tolerances, to expire June 30, 1996, are established for residues of 3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine (CAS Reg. No. 121776-33-8) when used as an inert ingredient (safener) in pesticide formulations in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
Corn, fodder (field).	0.01	June 30, 1996.
Corn, forage (field).	0.01	June 30, 1996.
Corn, grain (field).	0.01	June 30, 1996.

[FR Doc. 94–11192 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Parts 180, 185, and 186

[PP 4F3103, FAP 3H5654/R2055; FRL–4775–3]

RIN 2070–AB78

Pesticide Tolerances for Methoprene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the insecticide methoprene in or on various agricultural commodities. Zoecon Corp., A Sandoz Co., requested this regulation to establish the maximum permissible levels of methoprene in or on the commodities. This document also deletes certain obsolete food additive tolerances for methoprene.

EFFECTIVE DATE: This regulation becomes effective May 10, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 4F3103, FAP 3H5654/R2055], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 11, 1994 (59 FR 11570), EPA proposed to delete an expired, temporary food additive tolerance of 10 parts per million (ppm) for residues of the insecticide methoprene (isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on raisins, wheat flour, macaroni (wheat), rice cereal, rye cereal, barley cereal, wheat cereal, corn cereal, corn meal, grits, hominy, oat cereal, spices, dry dog food, dried apples, dried apricots, dried peaches, and dried prunes resulting from applictions of methoprene in accordance with the provisions of an experimental use permit that expired September 21, 1986. The tolerance was established under section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348) and appears in chapter I of title 40 of the Code of Federal Regulations (40 CFR 185.4150(b)). This temporary tolerance was established with issuance of an experimental use permit (EUP) and expired on September 21, 1986. The tolerance is obsolete, and EPA is removing it.

In the same **Federal Register** proposed rule (59 FR 11570, March 11, 1994), EPA described the submission of pesticide petition (PP) 4F3103 and food additive petition (FAP) 3H5654 from Zoecon Corp., A Sandoz Co., and proposed to establish tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, for the insecticide methoprene in or on various agricultural commodities.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulations deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to

review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

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

Dated: April 20, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By revising § 180.359, to read as follows:

§ 180.359 Methoprene; tolerances for residues.

Tolerances are established for residues of the insect growth regulator methoprene (isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley	5.0
Buckwheat	5.0
Cattle, fat	1.0
Cattle, meat	0.1
Cattle, meat byproducts	0.1
Corn (except popcorn and sweetcorn)	5.0
Eggs	0.1
Goats, fat	1.0
Goats, meat	0.1
Goats, meat byproducts	0.1
Hogs, fat	1.0
Hogs, meat	0.1
Hogs, meat byproducts	0.1
Horses, fat	1.0
Horses, meat	0.1
Horses, meat byproducts	0.1
Milk	0.1
Millet	5.0
Mushrooms	1.0
Oats	5.0
Peanuts	2.0
Peanut hulls	40.0
Poultry, fat	1.0
Poultry, meat	0.1
Poultry, meat byproducts	0.1
Rice	5.0
Rye	5.0
Sheep, fat	1.0
Sheep, meat	0.1
Sheep, meat byproducts	0.1
Sorghum (milo)	5.0
Wheat	5.0

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

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

b. In § 185.4150, by revising paragraph (b), to read as follows:

§ 185.4150 Methoprene.

* * * * *

(b) A tolerance of 10 parts per million is established for residues of isopropyl ((E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the food additive commodity cereal grain milled fractions (except flour and rice hulls).

PART 186—[AMENDED]

3. In part 186:

Authority: 21 U.S.C. 348.

b. In § 186.4150, by adding new paragraph (d), to read as follows:

§ 186.4150 Methoprene.

* * * * *

(d) Tolerances are established for residues of the insect growth regulator methoprene (isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the following feed additive commodities:

Feed	Parts per million
Cereal grain milled fractions (except flour and rice hulls)	10
Rice hulls	25

[FR Doc. 94–11197 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 93–063]

Vessel Rebuild Standards

AGENCY: Coast Guard, DOT.

ACTION: Policy statement.

SUMMARY: The Coast Guard is planning to undertake rulemaking to develop standards for vessel rebuild determinations. In order to help it determine the scope of the issues involved, the Coast Guard conducted two public meetings, the first on November 16, 1993, and the second on February 15, 1994. At the meetings, attendees discussed problems encountered under existing procedures and expressed confusion concerning the Coast Guard's current rebuild standard. This notice states the Coast Guard's regulatory standard for rebuild determinations and related practices and procedures.

EFFECTIVE DATE: May 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Burley, Vessel Documentation and Tonnage Survey Branch at (202) 267–1492.

SUPPLEMENTARY INFORMATION: Under 27 of the Merchant Marine Act, 1920 (46 U.S.C. app. 883), a vessel entitled to engage in the coastwise trade by virtue of having been built in the United States which is later rebuilt outside the United States, loses its eligibility to engage in the coastwise trade. Under 46 U.S.C. 12106, a vessel not eligible for the coastwise trade cannot receive a Great Lakes endorsement on its Certificate of Documentation. In addition, under 46 U.S.C. 12108, a fishing vessel which has been rebuilt outside the United States

and which does not qualify for the rebuild savings provision of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, is not eligible for a fishery endorsement on its Certificate of Documentation.

In accordance with the Coast Guard's regulatory standard, a vessel is rebuilt when "any considerable part of its hull or superstructure is built upon or is substantially altered." Prior to September 1989, the Coast Guard evaluated whether work performed on a vessel constituted a rebuilding under that standard by focusing on whether the nature of the work was structural or nonstructural. In September 1989, the Coast Guard issued a rebuild determination for work performed on the vessel *Monterey*. The *Monterey* decision analyzed and explained the Coast Guard's regulatory standard as a two step process. The first step in applying the standard is to identify that work which involves building upon or alteration of the hull or superstructure. Once the relevant work has been identified, the second step is to determine whether that work involves a considerable part of the hull or superstructure. If it does, then the vessel has been rebuilt. A determination that a vessel has been rebuilt, if the rebuilding was done outside the U.S., results in a permanent loss of the eligibility of the vessel to engage in the restricted trades, with a commensurate loss in value.

Effective January 1, 1994, the Coast Guard's regulatory standard for rebuild determinations is found in 46 CFR 67.177. (See final rule published in the **Federal Register** issue of Monday, November 15, 1993, page 60256.)

As a result of the regulatory requirement, the Coast Guard frequently receives applications for preliminary determinations that work to be performed on a vessel does not constitute a rebuilding. In support of an application for a rebuild determination, the applicant will generally enclose extensive documentation addressing the character and scope of the work to be performed including plans, drawings, contracts, work orders, and materials lists. The applicant will then attempt to show that the work will not build upon or "substantially" alter "any considerable part" of the vessel's hull or superstructure. Often, comparisons are made between the before and after area of the hull and superstructure; the weight of steel to be replaced or added will be compared to the vessel's total steelweight; or the cost of the planned work will be compared to the value of the vessel. Sometimes, the vessel representative submits no documentation until after the work is performed, which assumes the risk that the Coast Guard may determine that the vessel has been rebuilt, with the disastrous consequence of loss of trading entitlements. In other cases, the work actually done on the vessel differs from or exceeds the planned work, with possible adverse effects on the final determination. In any event, following completion of the work the vessel representative applies for a final determination.

The Coast Guard is planning to initiate rulemaking to develop standards for determining when work on a vessel constitutes a rebuilding and to define the terms involved in rebuild determinations. In support of the decision to initiate a rulemaking, the Coast Guard conducted a review of its rebuild determinations since the *Monterey* decision. The Coast Guard's experience has been that work performed on a vessel which involved five percent or less of the vessel's steelweight has never been determined to constitute a rebuilding. Barring unusual circumstances, the Coast Guard anticipates that this trend will continue. However, pending publication of a final rule on this matter, the Coast Guard will adhere to the published regulatory standard and will continue to follow its current practice of making case-by-case determinations as described above.

Dated: April 18, 1994.

A.E. Henn,

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

[FR Doc. 94–11223 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–14–M

Proposed Rules

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AF74

Federal Employees Health Benefits Program: Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: These regulations propose a number of changes to the Federal Employees Health Benefits (FEHB) Program. The changes would improve the administration of the FEHB Program and result in better service to enrollees.

DATES: We must receive comments on or before July 11, 1994.

ADDRESSES: Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 707, Washington, DC 20044, or deliver to OPM, room 3415, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert G. Iadicicco, (202) 606–0191.

SUPPLEMENTARY INFORMATION: These regulations would enhance the administration of the Federal Employees Health Benefits (FEHB) Program and improve service to enrollees by:

1. Clarifying that the last day of Open Season will be the Monday of the second full workweek in December, instead of the Friday of the first full workweek in December. This clarification is necessary because the second full workweek in November includes the Veterans Day holiday.

2. Giving retirement system staff the discretion to allow retirees to make FEHB coverage changes by other methods, such as telephone requests. Current policy requires retirees to fill out registration forms to make coverage changes. Allowing retirees to request FEHB coverage changes by telephone would result in the coverage changes taking effect sooner by eliminating the time spent requesting, completing, and returning a form. Retirees must still provide proof, satisfactory to the retirement system staff, that they meet the requirements to make the coverage change.

The ability to use methods other than a registration form to make FEHB coverage changes is limited to retirees because of two significant distinctions between retirees and employees. The first distinction is that the vast majority of retirees cannot quickly obtain and then submit registration forms because of the limited number of retirement system worksites. For example, retirees in the Civil Service Retirement System or the Federal Employees Retirement System who do not live near worksites in either Washington, DC or Boyers, Pennsylvania must wait for the registration form to be mailed to them and then wait for the completed form to be returned to the retirement system staff before the change in coverage can become effective. In comparison, most employees can easily obtain and submit registration forms to the office responsible for their health benefits actions because the office is located near the employee's worksite.

The second distinction is that employees must complete and sign registration forms to document their FEHB coverage during the course of their Federal employment. Retirement systems staff use the completed registration forms to determine whether the employee was covered by an FEHB plan during his or her last 5 years of employment. The employee must meet the 5 year requirement to continue his or her FEHB coverage into retirement. In contrast, once the retirement system staff determines a retiree meets the 5 year requirement and can continue his or her FEHB coverage into retirement there is no longer a need to document the retiree's FEHB coverage through signed registration forms.

3. Allowing a legally separated employee or annuitant covered as a family member under his or her spouse's FEHB enrollment to enroll in FEHB for self only or self and family coverage.

Current policy allows dual enrollment only to ensure all family members have FEHB coverage. For example, if two employees who are married to each other both have children from prior marriages who do not live with them, then both employees need to enroll for self and family coverage to provide FEHB coverage for all their children.

Under this regulation most couples who are legally separated will decide not to have two self and family enrollments because one self and family enrollment covers both spouses and all of their eligible children and is less expensive. However, in a limited number of cases, circumstances will lead the covered spouse to enroll for FEHB coverage in his or here own right. One example is when separation resulted in the covered spouse moving out of the service area of a comprehensive medical plan and the spouse carrying the enrollment refused to switch to a different plan. The covered spouse would find it very difficult to obtain covered health care. Another example is when the spouse finds it very difficult to obtain reimbursement for medical payments under a fee-for-service plan, because reimbursements are sent to the spouse carrying the enrollment.

The proposed regulations would not allow dual coverage. Each enrollee would have to notify the insurance carrier of the names of family members covered under his or her enrollment that are not covered under the other enrollment.

4. Extending to certain employees the option of reinstating FEHB coverage upon retirement. This option would be available to employees whose employing office terminated their FEHB enrollment because they entered on duty in a uniformed service, and who retire on an immediate annuity from their Federal civilian position while on such duty. The individual must make the request for reinstatement to the retirement system within 60 days after his or her retirement. If the individual does not exercise this option, the retirement system will automatically reinstate the FEHB enrollment on the day the person separates from the uniformed service. In either case, reinstatement will only take place if the Federal retiree meets the 5-year requirement for continuing FEHB coverage into retirement. Currently, retirement systems can reinstate the FEHB enrollment only on the day the person separates from the uniformed service.

5. Permitting retirees, whose entire annuity or compensation has been

waived or suspended, to pay FEHB premiums directly to the retirement system or the Office of Workers' Compensation Programs (OWCP) for any period of waiver or suspension which is 3 months or more. Currently, a retiree's FEHB coverage terminates when the period of the waiver or suspension exceeds 3 months. The retirement system or OWCP automatically reinstates FEHB coverage on a prospective basis when annuity or compensation payments resume. The proposed rule provides better service to retirees by allowing them to continue their FEHB coverage when their annuity or compensation is waived or suspended for more than 3 months.

6. Establishing a requirement that agencies counsel employees entering leave without pay status, or whose pay is insufficient to cover their FEHB premium payments, of the options of continuing or terminating their FEHB coverage, and if continuing, of paying premiums directly on a current basis or incurring a debt to be withheld from future salary. These regulations are intended to ensure employees are fully aware of these alternatives. Furthermore, because the regulations establish a procedure under which the employee voluntarily arranges to have the debt recovered from salary in a specified amount after returning to duty or after salary increases to cover the amount of the health benefits contributions, the involuntary offset provisions of 5 U.S.C. 5514 and subpart K of 5 CFR part 550 do not apply.

7. Deleting the sentence in section 890.701 that lists the States determined to be "medically underserved areas" effective January 1, 1988, because the list is out of date. Since 1988, the list of States determined to be "medically underserved areas" for each contract year have been published on an annual basis in a notice in the **Federal Register**.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.
Lorraine A. Green,
Deputy Director.

Accordingly, OPM proposes to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. In § 890.101, the definition of *Register* is revised to read as follows:

§ 890.101 Definitions; time computations.

* * * * *

Register means to file with the employing office a properly completed health benefits registration form, either electing to be enrolled in a health benefits plan or electing not to be enrolled. Retirement systems may accept alternative means, such as telephone requests, in substitution of a properly completed health benefits registration form. *Register to enroll* means to register an election to be enrolled. *Enrolled* means a valid registration form has been accepted by the employing office, or an alternative method has been accepted by the retirement system, and the enrollment in a health benefits plan approved by OPM under this part has not been terminated or cancelled.

§ 890.301 [Amended]

3. In § 890.301, paragraph (c) is amended by removing "§ 890.304(a)(4)" and adding in its place "§ 890.304(a)(5)"; paragraph (d)(1) introductory text is amended by removing "through the Friday of the first full work-week in December" and adding in its place "through the Monday of the second full workweek in December".

4. In § 890.302, paragraph (a)(2) is revised, and paragraph (a)(3)(i) is amended by adding the words "or legally separated" after the word "divorced", to read as follows:

§ 890.302 Coverage of family members.

(a) * * *

(2) *Dual enrollment—spouse.* (i) To protect the interests of the children, an employee or annuitant may enroll in his or her own right in a self and family enrollment even though is or her spouse also has a self and family enrollment. Generally, such dual enrollments are permitted only where two employees or annuitants are married, each with children from prior marriages who do not live with them, or are legally separated, with each spouse retaining custody of his or her own children by a prior marriage. To ensure that no person receives benefits under more than one enrollment, each enrollee must tell the insurance carrier which family members are covered under his or her enrollment. These individuals are not covered under the other enrollment.

(ii) To protect the interests of legally separated Federal employees, annuitants and their children, a legally separated employee or annuitant may enroll in his or her own right in a self only or self and family enrollment even though his or her spouse also has a self and family enrollment. To ensure that no person receives benefits under more than one enrollment, each enrollee must tell the insurance carrier which family members are covered under his or her enrollment. These individuals are not covered under the other enrollment.

* * * * *

5. In § 890.305, paragraph (b) is revised to read as follows:

§ 890.305 Reinstatement of enrollment after military service.

* * * * *

(b) An employee whose employing office terminates his or her enrollment because his or her order to enter on duty in a uniformed service is for a period longer than 30 days, and who retires on an immediate annuity from his or her Federal civilian position while on such duty, may reinstate his or her enrollment by asking to do so within 60 days after retirement. In the absence of such a request, the retirement system automatically reinstates the enrollment on the day the person separates from the uniformed service. For the retirement system to reinstate the enrollment, the individual must have been covered under this part since his or her first opportunity or for the 5 years of civilian service (excluding the period of uniformed service) immediately preceding the civilian retirement, whichever is shorter.

6. Section 890.307 is revised to read as follows:

§ 890.307 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraphs (b) and (f) of this section, when annuity or compensation is entirely waived or suspended, the annuitant's enrollment continues for not more than 3 months (not more than 12 weeks for annuitants whose compensation under subchapter I of chapter 81 of title 5, United States Code, is paid each 4 weeks). If the waiver or suspension continues beyond

this period, the employing office will notify the annuitant in writing that the employing office will terminate the enrollment effective at the end of the period, subject to the temporary extension of coverage for conversion, unless the annuitant elects to make payment of the premium directly to the employing office during the period of waiver. If the annuitant elects to have the enrollment terminated, the employing office automatically reinstates the enrollment on a prospective basis when the annuitant again receives payment of annuity or compensation. The employing office will make the withholding for the period of suspension or waiver during which enrollment was continued (i.e., 3 months or less).

(b) If the annuitant elects to pay premiums directly, he or she must send to the employing office his or her share of the subscription charge for the enrollment for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 890.401. The annuitant must pay after each pay period he or she is covered in accordance with a schedule established by the employing office. If the employing office does not receive payment by the date due, the employing office will notify the annuitant by certified mail return receipt requested that coverage will continue only if payment is made within 15 days after receipt of the notice. The employing office will terminate the enrollment of an annuitant who fails to pay within the specified time frame. The employing office will automatically reinstate the enrollment on a prospective basis when payment of annuity or compensation resumes.

(c) If the annuitant is prevented by circumstances beyond his or her control from paying within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the employing office. The annuitant must file the request within 30 calendar days from the date of termination, and must include supporting documentation. The employing office will determine if the annuitant is eligible for reinstatement of coverage; and, when the determination is affirmative, reinstate the coverage of the annuitant retroactive to the date of termination. If the determination is negative, the annuitant may request a review of the decision as provided in § 890.104.

(d) Termination of enrollment for failure to pay premiums within the time frame established in accordance with paragraph (b) of this section is retroactive to the end of the last period for which the employing office timely received payment.

(e) The employing office will submit all direct premium payments along with its regular health benefits premiums to OPM in accordance with procedures established by that office.

(f) If suspension of annuity or compensation is because of reemployment, the reemploying office must make the withholding currently and enrollment continues during reemployment.

7. In § 890.502, the heading, paragraphs (a), (b), (c), and (d) are revised; paragraphs (e), (f), and (g) are removed; and paragraph (h) is redesignated as paragraph (e), to read as follows:

§ 890.502 Employee withholdings and contributions and direct payment of premiums.

(a) *Employee and annuitant withholdings and contributions.* (1) Except as provided in paragraph (a)(2) of this section, an employee or annuitant is responsible for payment of the employee share of the cost of enrollment for every pay period during which the enrollment continues. An employee or annuitant incurs an indebtedness due the United States in the amount of the proper employee withholding required for each pay period that health benefits withholdings or direct premium payments are not made but during which the enrollment continues.

(2) An individual is not required to pay withholdings for the period between the end of the pay period in which he or she separates from service and the commencing date of an immediate annuity, if later.

(3) Temporary employees who are eligible to enroll under 5 U.S.C. 8906a must pay the full subscription charges including both the employee share and the Government contribution. Employees with provisional appointments under § 316.403 are not considered eligible for coverage under 5 U.S.C. 8906a for the purpose of this paragraph.

(4) The employing office must determine the withholding for employees whose annual pay is paid during a period shorter than 52 workweeks on an annual basis and prorate the withholding over the number of installments of pay regularly paid during the year.

(5) The employing office must make the withholding required from enrolled survivor annuitants in the following order. First, withhold from the annuity of a surviving spouse, if any. If that annuity is less than the withholding required, the employing office must make the withholding to the extent necessary from the annuity of the children, if any, in the following order. First, withhold from the annuity of the youngest child, and if necessary, then from the annuity of the next older child, in succession, until the withholding is satisfied.

(6) Surviving spouses in receipt of a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) and annuitants whose health benefits premiums exceed the amount of their annuities may pay their portion of the health benefits premium directly to the retirement system acting as their employing office in accordance with procedures set out in paragraph (d) of this section.

(b) *Procedures when employee enters LWOP status or pay is insufficient to cover premium.* (1) The employing office must counsel employees concerning the health benefits options available to them when the premium payments cannot be made either because the employees will be entering leave-without-pay status or because the employees' pay is insufficient to cover the premiums.

(2) Employees must elect in writing either to continue health benefits coverage or terminate it. If they elect to continue coverage, they must—

(i) Agree to pay the premium directly to the agency on a current basis, or

(ii) Agree to have the accrued premiums deducted from salary in a specified amount upon returning to employment, or upon pay becoming sufficient to cover the premiums.

(3) If an employee does not return to work or the employing office cannot recover the debt in full from salary, it may recover the debt from whatever other sources it normally has available for recovery of a debt to the United States.

(c) *Procedures when an agency under withholds.* (1) An agency that withholds less than or none of the proper health benefits contributions from an individual's pay, annuity, or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8906 of title 5, United States Code, to OPM for deposit in the Employees Health Benefits Fund.

(2) The agency must make the deposit to OPM described in paragraph (c)(1) of this section as soon as possible, but no later than 60 calendar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when

the agency recovers the underdeduction. A subsequent agency determination whether to waive collection of the overpayment of pay caused by failure to properly withhold employee health benefits contributions shall be made in accordance with 5 U.S.C. 5584 as implemented by 4 CFR chapter I, subchapter G, unless the agency involved is excluded from application of 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

(d) *Direct premium payments for annuitants.* (1) If an annuity, excluding an annuity under Subchapter III of Chapter 84 (Thrift Savings Plan), is too low to cover the health benefits premium due or if a surviving spouse receives a basic employee death benefit, the retirement system will provide information to the annuitant regarding the available plans and notify him or her in writing of the opportunity to either: register to be enrolled in any plan in which the enrollee's share of the premium is not in excess of the annuity; or make payment of the premium directly to the retirement system.

(2) The retirement system must establish a method for accepting direct payment for health benefits premiums from surviving spouses who have received or are currently receiving basic employee death benefits as well as from annuitants whose annuities are too low to cover their health premiums. The annuitant must continue to make direct payment of the health benefits premium even if the annuity increases to the extent that it covers the premium.

(3) The surviving spouse or annuitant must pay to the retirement system his or her share of the premium for the enrollment for every pay period during which the enrollment continues, exclusive of the 31-day temporary extension of coverage for conversion provided in § 890.401. The surviving spouse or annuitant must pay after each pay period in which he or she is covered in accordance with a schedule established by the retirement system. If the retirement system does not receive payment by the date due, the retirement system will notify the surviving spouse or annuitant by certified mail return receipt requested that coverage will continue only if payment is made within 15 days after receipt of the notice. The retirement system will terminate the enrollment of a surviving spouse or annuitant who fails to pay within the specified time frame. A surviving spouse or annuitant whose enrollment is terminated because of nonpayment of premium may not reenroll or reinstate coverage, except as provided in paragraph (d)(4) of this section.

(4) If the surviving spouse or annuitant is prevented by circumstances beyond his or her control from paying within 15 days after receipt of the notice, he or she may request reinstatement of coverage by writing to the retirement system. The surviving spouse or annuitant must file the request within 30 calendar days from the date of termination, and must include supporting documentation. The retirement system will determine if the surviving spouse or annuitant is eligible for reinstatement of coverage; and, when the determination is affirmative, reinstate the coverage of the surviving spouse or annuitant retroactive to the date of termination. If the determination is negative, the individual may request a review of the decision as provided in § 890.104.

(5) Termination of enrollment for failure to pay premiums within the time frame established in accordance with paragraph (d)(3) of this section is retroactive to the end of the last pay period for which payment has been timely received.

(6) The retirement system will submit all direct premium payments along with its regular health benefits premiums to OPM in accordance with procedures established by that office.

* * * * *

§ 890.701 [Amended]

8. Section 890.701 is amended by removing the last sentence of the definition of Medically underserved area.

§ 890.808 [Amended]

9. In § 890.808, paragraph (a) is amended by removing "§ 890.805(d)" and adding in its place "§ 890.805(b)" and by removing "§ 890.805(e)" and adding in its place "§ 890.805(c)".

[FR Doc. 94–11165 Filed 5–9–94; 8:45 am]
BILLING CODE 6325–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AF03

Revision of Fee Schedules; 100% Fee Recovery, FY 1994

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement Public Law 101–508, enacted November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1994 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1994 is approximately $513 million.

DATES: The comment period expires June 9, 1994. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because Public Law 101–508 requires that NRC collect the FY 1994 fees by September 30, 1994, requests for extensions of the comment period will not be granted.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–504–1678).

Copies of comments received and the agency workpapers that support these proposed changes to 10 CFR parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–4301.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Action.
III. Section-by-Section Analysis.
IV. Environmental Impact: Categorical Exclusion.
V. Paperwork Reduction Act Statement.
VI. Regulatory Analysis.
VII. Regulatory Flexibility Analysis.
VIII. Backfit Analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered NWF for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. The services provided by the NRC for which these fees are assessed include the review of applications for the issuance of new licenses or approvals, amendments to or renewal of licenses or approvals, and inspections of licensed activities. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

Subsequent to enactment of OBRA–90, the NRC published five final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the **Federal Register** that established the Part 170 professional hourly rate and the materials licensing and inspection fees, as well as the Part 171 annual fees, to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and methodology for determining both the 10 CFR part 170 hourly rate and fees and the 10 CFR part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties; the U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on March 16, 1993, remanding two issues to the NRC for further consideration (988 F.2d 146 (D.C. Cir. 1993)). The court decision was also extended to cover the FY 1992 fee rule by court order dated April 30, 1993.

On April 17, 1992 (57 FR 13625), the NRC published in the **Federal Register** two limited changes to 10 CFR parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR part 171 lowered in some cases the maximum annual fee of $1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A lower tier small entity fee of $400 per licensed category was established for small business and non-profit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), the NRC published final rules in the **Federal Register** that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992 and FY 1993 respectively. The basic methodology used in the FY 1992 and FY 1993 final rules was unchanged from that used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472). The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 in response to the judicial decision mentioned earlier. This change was explained in detail in the FY 1993 final rule published July 20, 1993 (58 FR 38669–72). The NRC created two groups—large waste generators and small waste generators. Licensees within each group are charged a uniform flat fee.

On March 17, 1994 (59 FR 12539), the NRC reinstated the annual fee exemption for nonprofit educational institutions after notice and comment. In response to the March 16, 1993 judicial decision, the exemption had been eliminated in the final rule published by NRC on July 20, 1993 (58 FR 38666).

The American College of Nuclear Physicians and the Society of Nuclear Medicine filed a Petition for Rulemaking which included a request that the Commission exempt medical licensees from fees for services provided in nonprofit institutions. The Commission denied that request on March 17, 1994, (59 FR 12555).

Section 2903(c) of the Energy Policy Act of 1992 required the NRC to undertake a broad review of its annual fee policies under section 6101(c) of OBRA–90, solicit public comment on the need for policy changes, and recommend changes in existing law to the Congress that the NRC found were needed to prevent the placement of an unfair burden on certain NRC licensees. To comply with the Energy Policy Act requirements, the NRC reviewed more than 500 public comments submitted in response to the request for comment published in the **Federal Register** on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees for FY 1994. OBRA–90 requires that the NRC recover approximately 100 percent of its FY 1994 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF, by assessing licensing, inspection, and annual fees.

For FY 1994, the NRC's budget authority was originally $547.7 million. The Commission, in its effort to streamline operations, proposed a $12.7 million rescission to the original appropriation for FY 1994. Congress approved this NRC proposed reduction resulting in a revised budget authority of $535.0 million. Approximately $22.0 million of the revised budget was appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $513.0 million in FY 1994 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount for FY 1994 is about $6 million less than the total amount for FY 1993. The NRC estimates that approximately $116.2 million will be recovered in FY 1994 from the fees assessed under 10 CFR part 170. The remaining $396.8 million will be recovered through the 10 CFR part 171 annual fees established for FY 1994.

The NRC has not changed the basic approach, policies, or methodology for calculating the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees set forth in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666) with the following exceptions. The Commission has reinstated the annual fee exemption for nonprofit educational institutions. In this proposed rule, the NRC has directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but are now assigned directly to the class of licenses that they support. As a result of this direct assignment, the cost per direct FTE is about 3% less than it would have been without the additional direct assignment.

The NRC contemplates that any fees to be collected as a result of this proposed rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1994, as stipulated in the Public Law. Therefore, as in FY 1991, FY 1992, and FY 1993, the fees, if adopted, will become effective 30 days after publication of the final rule in the **Federal Register**. The NRC will send a bill for the amount of the annual fee to

the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment is due on the effective date of the FY 1994 rule, which is estimated to be August 1, 1994.

A. Amendments to 10 CFR part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

The NRC proposes four amendments to part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, the NRC proposes that the agency-wide professional hourly rate, which is used to determine the part 170 fees, be increased from $132 per hour to $133 per hour ($231,216 per direct FTE). The rate is based on the FY 1994 direct FTEs and that portion of the FY 1994 budget that is not direct program support (contractual services costs) and not recovered through the appropriation from the NWF. As indicated earlier, the decrease in the FY 1994 budget compared to the FY 1993 budget is primarily for direct program support which is not included in the hourly rate. Thus, the reduction in the budget has limited impact on the hourly rate but will show as a direct reduction to the amount allocated to the various classes of licensees.

Second, the NRC proposes that the current part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants and licensees be adjusted to reflect the very small increase in the hourly rate.

Third, the NRC is also proposing to revise the definition of special projects as provided in § 170.3 of the regulations. This change is proposed because of (1) our experience in implementing the 100 percent fee recovery program during the past three years and (2) the NRC's most recent fee policy review that was required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR part 171 annual fees rather than assessing specific fees under 10 CFR part 170. These reports, although submitted by a specific organization, support NRC's development of generic guidance and regulations (e.g., rules, regulatory guides and policy statements), and resolution of safety issues applicable to a class of licensees such as those addressed in generic letters. Therefore, the NRC proposes that the definition in § 170.3 as well as the footnotes in §§ 170.21 and 170.31 be revised to indicate that 10 CFR part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

Fourth, the NRC is proposing to amend Category 16 of § 170.31, reciprocity, to include a fee to recover the costs expended by the NRC for the review of revisions to the information submitted on the NRC Form 241 filed by 10 CFR 150.20 general licensees during the remainder of the calendar year. Persons engaging in activities in a non-Agreement State under the reciprocity provisions of § 150.20 are required to file an NRC Form 241 for the initial application in a calendar year. Revisions to the initial NRC Form 241 are filed for review and authorization in lieu of filing additional Forms 241 when persons using the 10 CFR 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

B. Amendments to 10 CFR part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

The NRC proposes six amendments to 10 CFR Part 171. First, the NRC is proposing to amend § 171.11(a)(2) to provide that State-owned research reactors used primarily for education and training and academic research purposes will be exempt from the annual fee. The NRC believes that this proposed change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria of the exemption and are used primarily for educational training and research purposes.

Second, NRC proposes to amend §§ 171.15 and 171.16 to revise the annual fees for FY 1994 to recover approximately 100 percent of the FY 1994 budget authority less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Third, NRC proposes to amend fee Category 18 of § 171.16(d) to assess fees to the Department of Energy (DOE) for the general license in 10 CFR 40.27. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Pub. L. 95–604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The general license provided for in the regulation covers only post-reclamation closure custody and site surveillance. Based on NRC's acceptance of DOE's Long Term Surveillance Plan for the Spook, Wyoming site on September 21, 1993, the site is now subject to the general license in 10 CFR 40.27. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481, July 10, 1991). As a result, DOE would be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR Part 170 fees. Since DOE, as a Federal agency, cannot be assessed Part 170 fees under the Independent Offices Appropriation Act of 1952 (IOAA), the result is that NRC proposes to assess annual fees for the total costs of DOE UMTRCA activities to DOE.

Fourth, the NRC is proposing to amend 10 CFR 171.17 to add a proration provision for materials licenses and to revise the proration provision for reactors. The annual fee for materials licensees would be prorated based on applications filed after October 1 of the fiscal year either to reduce the scope of a license or to terminate a license. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to downgrade the license or terminate the license would pay one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those

materials licensees filing applications on or after April 1 of the fiscal year to downgrade or terminate a license would pay the full annual fee. Those licensees who file for termination or downgrade must also permanently cease operations of those licensed activities during the periods mentioned for the fees to be reduced. Similarly, materials licensees who were issued new licenses or licenses of increased scope during the fiscal year would also be charged a prorated annual fee based on the date of issuance of the new license or license amendment increasing its scope. New materials licenses issued during the period October 1 through March 31 would be assessed one-half of the annual fee stated in § 171.16(d) for the applicable fee category(ies). New licenses issued on or after April 1 would not be assessed an annual fee.

In addition, materials licenses amended during the period from October 1 through March 31 to increase the scope would be assessed one-half the annual fee for the new fee category(ies). Materials licenses amended on or after April 1 to increase the scope of the license would not be assessed the annual fee for the new fee category(ies).

The NRC proposes to amend the proration provision in § 171.17 applicable to reactors to provide that for licensees who have requested amendment to withdraw operating authority permanently during the FY the annual fee will be prorated based on the number of days during the FY the operating license was in effect before the possession only license was issued or the license was terminated.

Fifth, the NRC is proposing to modify Footnote 1 of 10 CFR 171.16(d) to provide for a waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their license or approval or filed for a possession only/storage license prior to October 1, 1993, and permanently ceased licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993, would be subject to FY 1994 annual fees. This change is in recognition of the fact that since the final FY 1993 rule was published in July 1993, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1993 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1993. Similar situations existed after the FY 1991 and FY 1992 rules were published, and in those cases NRC provided an exemption from the requirement that the annual fee is waived only where a license is terminated before October 1 of each fiscal year.

Sixth, the NRC is proposing to amend § 171.19 to credit the quarterly partial payments already made by certain licensees in FY 1994 either toward their total annual fee to be assessed or to make refunds, if necessary.

The proposed 10 CFR part 171 annual fees have been determined using the same method used to determine the FY 1991, FY 1992, and FY 1993 annual fees. The amounts to be collected through annual fees in the amendments to 10 CFR part 171 are based on the increased professional hourly rate. The proposed amendments to 10 CFR part 171 do not change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec., at H12692–93).

During the past three years, many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes once again that annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material. To remove any uncertainties regarding agency policy on this issue, the NRC amended 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993.

C. FY 1994 Budgeted Costs

The FY 1994 budgeted costs, by major activity, to be recovered through 10 CFR parts 170 and 171 fees, are shown in Table I.

TABLE I.—RECOVERY OF NRC'S FY 1994 BUDGET AUTHORITY

(Dollars in-millions)

Recovery method	Estimated amount
Nuclear waste fund	$22.0
Part 170 (license and inspection fees)	116.2
Other receipts	.1
Part 171 (annual fees):	
Power reactors	306.0
Nonpower reactors	.4
Fuel facilities	16.8
Spent fuel storage	2.2
Uranium recovery	2.1
Transportation	4.0
Material users	[1] 38.6
Subtotal part 171	370.1
Costs remaining to be recovered not identified above	$26.6
Total	535.0

[1] Includes $6.3 million that will not be recovered from small materials licensees because of the reduced small entity fees.

The NRC is proposing that the $26.6 million identified for those activities which are not identified as either 10 CFR Parts 170 or 171 or the NWF in Table I be distributed among the classes of licensees as follows:

$24.4 million to operating power reactors;

$.7 million to fuel facilities; and

$1.5 million to other materials licensees.

In addition, approximately $6.3 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower tier small entity fee of $400 for certain licensees. In order for the NRC to recover 100 percent of its FY 1994 budget authority in accordance with OBRA–90, the NRC is proposing to recover $5.3 million of the $6.3 million from operating power reactors and the remaining $1.0 million from other nonreactor entities that do not meet NRC small entity size standards.

This distribution results in an additional charge (surcharge) of approximately $275,000 per operating power reactor; $55,600 for each HEU,

LEU, UF_6 and each other fuel facility license; $1,500 for each materials license in a category that generates a significant amount of low level waste; and $170 for other materials licenses. When added to the base annual fee of approximately $2.8 million per reactor, this will result in an annual fee of approximately $3.1 million per operating power reactor. The total fuel facility annual fee would be between approximately $1.2 million and $3.2 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

The proposed additional charges not directly or solely attributable to a specific class of NRC licensees and costs not recovered from all NRC licensees on the basis of previous Commission policy decisions would be recovered from the designated classes of licensees previously identified. A further discussion and breakdown of the specific costs by major classes of licensees are shown in Section III of this proposed rule.

III. Section-by-Section Analysis

The following analysis of those sections that are affected under this proposed rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.3 Definitions

This section would be amended to revise the definition of special projects. This proposed change is based on our experience during the past three years in implementing the 100 percent fee recovery program and the fee policy review required by the Energy Policy Act of 1992. The NRC believes that the costs for some requests or reports being filed with NRC are more appropriately captured in the 10 CFR Part 171 annual fees instead of assessing specific fees under 10 CFR Part 170. Therefore, it is proposed that the definition in § 170.3, as well as the footnotes in §§ 170.21 and 170.31, be revised to indicate that 10 CFR Part 170 fees will not be assessed for requests/reports which have been submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

Section 170.20 Average Cost per Professional Staff Hour

This section would be amended to reflect an agency-wide, professional staff-hour rate based on FY 1994 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1994 for all fee categories that are based on full cost is $133 per hour, or $231,216 per direct FTE. The rate is based on the FY 1994 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The rate is calculated using the identical method established for FY 1991, FY 1992, and FY 1993. The method is as follows:

1. All direct FTEs are identified in Table II by major program. It is noted that for FY 1994 the NRC has traced additional direct effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. The cost for these activities had previously been included in overhead, but are now being directly assigned to the class of licensees that they support.

TABLE II.—ALLOCATION OF DIRECT FTES BY MAJOR PROGRAM

Major program	Number of direct FTEs[1]
Reactor Safety & Safeguards Regulation	1,034.4
Reactor Safety Research	111.3
Nuclear Material & Low-Level Waste Safety & Safeguards Regulation	352.5
Reactor Special and Independent Reviews, Investigations, and Enforcement	111.7
Nuclear Material Management and Support	19.0
Total direct FTE	[2] 1,628.9

[1] FTE (full time equivalent) is one person working for a full year. Regional employees are counted in the office of the program each supports.

[2] In FY 1994, 1,628.9 FTEs of the total 3,223 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,594.1 FTEs are considered overhead and general and administrative.

2. NRC FY 1994 budgeted costs are allocated, in Table III, to the following four major categories:

(a) Salaries and benefits.
(b) Administrative support.
(c) Travel.
(d) Program support.

3. Direct program support, which is the use of contract or other services in support of the line organization's direct program, is excluded because these costs are charged directly through the various categories of fees.

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support, and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the final rules published July 10, 1991 (56 FR 31472), July 23, 1992 (57 FR 32691), and July 20, 1993 (58 FR 38666), and excluding direct Program Support funds, allocating the remaining $376.6 million uniformly to the direct FTEs (1,628.9) results in a rate of $231,216 per FTE for FY 1994. The Direct FTE Hourly Rate is $133 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing $376.6 million by the number of direct FTEs (1,628.9 FTE) and the number of productive hours in one year (1744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities."

TABLE III.—FY 1994 BUDGET AUTHORITY BY MAJOR CATEGORY

[Dollars in millions]

Salaries and benefits	$259.5
Administrative support	86.7
Travel	15.9
Total nonprogram support obligations	362.1
Program support	150.9
Total Budget Authority	513.0
Less direct program support and offsetting receipts	136.4
Budget Allocated to Direct FTE	376.6
Professional Hourly Rate	133

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses.

The NRC is proposing to revise the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect the FY 1994 budgeted costs and to recover costs

incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this rule would be assessed at the FY 1994 rate shown in § 170.20. The amount of the import and export licensing fees in § 170.21, facility Category K, has not changed from FY 1993 as a result of the very small increase in the hourly rate from $132 per hour to $133 per hour. Although the amount of the fees did not change, they are being published for purposes of convenience.

For those applications currently on file and pending completion, the NRC is proposing to revise footnote 2 of § 170.21 to provide that the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993, as appropriate. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses.

The licensing and inspection fees in this section would be modified to recover the FY 1994 costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, are adjusted to reflect the very small increase in the professional hourly rate from $132 per hour in FY 1993 to $133 per hour in FY 1994. In many cases, the fees for FY 1994 are the same as those assessed in FY 1993.

The amounts of the licensing and inspection flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than $1,000 are rounded to the nearest $100. Fees under $1,000 are rounded to the nearest $10.

The proposed fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. The fees will be assessed for applications filed or inspections conducted on or after the effective date of this rule.

The NRC is proposing to amend Category 16, reciprocity, to include a fee to recover the costs incurred by the NRC for the review of revisions to the information submitted on the NRC Form-241 filed by the 10 CFR 150.20 general licensees during the remainder of the calendar year. Persons engaging in activities in a non-Agreement State under the reciprocity provision of § 150.20 are required to file an NRC Form 241 for the initial application in a calendar year. Revisions to the initial NRC Form 241 are filed for review and authorization in lieu of filing additional Forms 241 when persons using the 10 CFR 150.20 general license either add locations of work, use different radioactive material or perform additional work activities in a non-Agreement State.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the revised hourly rate of $133, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of this rule.

Part 171

Section 171.11 Exemptions

Paragraph (a)(2) of this section would be amended to exempt State-owned reactors used primarily for educational training and research purposes from annual fees. The NRC believes that this proposed change is consistent with the legislative intent of the Energy Policy Act of 1992 that government-owned research reactors be exempt from annual fees if they meet the technical design criteria of the exemption and are used primarily for educational training and research purposes. There is one research reactor, owned by the Rhode Island Atomic Energy Commission, that would be exempt under this proposed amendment to § 171.11.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section would be revised to reflect FY 1994 budgeted costs. Paragraphs (a), (b)(3), (c)(2), (d), and (e) would be revised to comply with the requirement of OBRA–90 to recover approximately 100 percent of the NRC budget for FY 1994. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1994 programs and program elements. The resulting total base annual fee amount for power reactors is also shown.

TABLE IV.—ALLOCATION OF NRC FY 1994 BUDGET TO POWER REACTORS' BASE FEES [1]

	Program element total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Reactor safety and safeguards regulation (RSSR):				
Standard reactor designs	$9,531	96.3	$9,361	92.8
Reactor license renewal	600	33.9	600	33.9
Reactor and site licensing	1,810	34.7	1,810	29.8
Resident inspections	.....	207.0	.....	207.0
Region-based inspections	2,780	235.0	2,780	229.8
Interns (HQ and regions)	.....	23.0	.....	23.0
Special Inspections	970	42.7	970	42.7
License maintenance and safety evaluations	4,142	208.5	4,142	208.5
Plant performance	927	52.1	927	52.1
Human performance	4,760	54.7	4,403	51.1
Other safety reviews and assistance	3,443	46.5	3,213	38.8

TABLE IV.—ALLOCATION OF NRC FY 1994 BUDGET TO POWER REACTORS' BASE FEES [1]—Continued

	Program element total		Allocated to power reactors	
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
RSSR program total			28,206	1,009.5
Reactor safety research (RSR):				
Standard reactor designs	16,676	29.3	16,676	29.3
Reactor aging and license renewal	23,273	13.7	22,573	13.6
Plant performance	3,173	4.2	3,173	4.2
Human reliability	4,428	7.0	4,428	7.0
Reactor accident analysis	20,284	26.7	20,284	26.7
Safety issue resolution and regulatory improvements	10,240	30.4	10,240	30.4
RSR program total			77,374	111.2
Nuclear material and low level (NMLL)				
NMLL (NMSS):				
Fuel cycle safety and safeguards	4,783	85.8	1,494	2.8
LLW licensing and inspection	592	14.3		1.4
Uranium recovery licensing and inspection	265	14.4	21	0
Decommissioning	2,215	30.8	9	6.7
NMLL (RES):				
Environmental policy and decommissioning	2,410	9.0	964	3.6
NMLL program total			2,488	14.5
Reactor special and independent reviews, investigations, and enforcement				
AEOD:				
Diagnostic evaluations	288	5.0	288	5.0
Incident investigations	26	1.0	26	1.0
NRC incident response	1,854	26.0	1,854	24.0
Operational experience evaluation	5,447	30.0	5,447	29.0
Committee to review generic requirements		2.0		2.0
AEOD subtotal			7,615	61.0
Advisory committee on reactor safeguards			181	20.5
Office of investigations				17.0
Office of enforcement			10	7.0
RSIRIE program total			7,806	105.5
Total base fee amount allocated to power reactors			402.7 million [2]	
Less estimated part 170 power reactor fees			96.7 million	
Part 171 base fees for operating power reactors			306.0 million	

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees to be assessed for FY 1994 are the amounts shown in Table V below for each nuclear power operating license.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment type	Annual fee
Westinghouse:		
1. Beaver Valley 1	PWR large dry containment	$2,841,000
2. Beaver Valley 2	do	2,841,000
3. Braidwood 1	do	2,841,000
4. Braidwood 2	do	2,841,000
5. Byron 1	do	2,841,000
6. Byron 2	do	2,841,000
7. Callaway 1	do	2,841,000
8. Comanche Peak 1	do	2,841,000
9. Comanche Peak 2	do	2,841,000
10. Diablo Canyon 1	do	2,839,000
11. Diablo Canyon 2	do	2,839,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
12. Farley 1	do	2,841,000
13. Farley 2	do	2,841,000
14. Ginna	do	2,841,000
15. Haddam Neck	do	2,841,000
16. Harris 1	do	2,841,000
17. Indian Point 2	do	2,841,000
18. Indian Point 3	do	2,841,000
19. Kewaunee	do	2,841,000
20. Millstone 3	do	2,841,000
21. North Anna 1	do	2,841,000
22. North Anna 2	do	2,841,000
23. Point Beach 1	do	2,841,000
24. Point Beach 2	do	2,841,000
25. Prairie Island 1	do	2,841,000
26. Prairie Island 2	do	2,841,000
27. Robinson 2	do	2,841,000
28. Salem 1	do	2,841,000
29. Salem 2	do	2,841,000
30. Seabrook 1	do	2,841,000
31. South Texas 1	do	2,841,000
32. South Texas 2	do	2,841,000
33. Summer 1	do	2,841,000
34. Surry 1	do	2,841,000
35. Surry 2	do	2,841,000
36. Turkey Point 3	do	2,841,000
37. Turkey Point 4	do	2,841,000
38. Vogtle 1	do	2,841,000
39. Vogtle 2	do	2,841,000
40. Wolf Creek 1	do	2,841,000
41. Zion 1	do	2,841,000
42. Zion 2	do	2,841,000
43. Catawba 1	PWR—Ice condenser	2,840,000
44. Catawba 2	do	2,840,000
45. Cook 1	do	2,840,000
46. Cook 2	do	2,840,000
47. McGuire 1	do	2,840,000
48. McGuire 2	do	2,840,000
49. Sequoyah 1	do	2,840,000
50. Sequoyah 2	do	2,840,000
Combustion engineering:		
1. Arkansas 2	PWR large dry containment	2,840,000
2. Calvert Cliffs 1	do	2,840,000
3. Calvert Cliffs 2	do	2,840,000
4. Ft. Calhoun 1	do	2,840,000
5. Maine Yankee	do	2,840,000
6. Millstone 2	do	2,840,000
7. Palisades	do	2,840,000
8. Palo Verde 1	do	2,838,000
9. Palo Verde 2	do	2,838,000
10. Palo Verde 3	do	2,838,000
11. San Onofre 2	do	2,838,000
12. San Onofre 3	do	2,838,000
13. St. Lucie 1	do	2,840,000
14. St. Lucie 2	do	2,840,000
15. Waterford 3	do	2,840,000
Babcock & Wilcox:		
1. Arkansas 1	do	2,840,000
2. Crystal River 3	do	2,840,000
3. Davis Besse 1	do	2,840,000
4. Oconee 1	do	2,840,000
5. Oconee 2	do	2,840,000
6. Oconee 3	do	2,840,000
7. Three Mile Island 1	do	2,840,000
General Electric:		
1. Browns Ferry 1	Mark I	2,821,000
2. Browns Ferry 2	do	2,821,000
3. Browns Ferry 3	do	2,821,000
4. Brunswick 1	do	2,821,000
5. Brunswick 2	do	2,821,000
6. Clinton 1	Mark III	2,821,000
7. Cooper	Mark I	2,821,000
8. Dresden 2	do	2,821,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
9. Dresden 3	do	2,821,000
10. Duane Arnold	do	2,821,000
11. Fermi 2	do	2,821,000
12. Fitzpatrick	do	2,821,000
13. Grand Gulf 1	Mark III	2,821,000
14. Hatch 1	Mark I	2,821,000
15. Hatch 2	do	2,821,000
16. Hope Creek 1	do	2,821,000
17. LaSalle 1	Mark II	2,821,000
18. LaSalle 2	do	2,821,000
19. Limerick 1	do	2,821,000
20. Limerick 2	do	2,821,000
21. Millstone 1	Mark I	2,821,000
22. Monticello	do	2,821,000
23. Nine Mile Point 1	do	2,821,000
24. Nine Mile Point 2	Mark II	2,821,000
25. Oyster Creek	Mark I	2,821,000
26. Peach Bottom 2	do	2,821,000
27. Peach Bottom 3	do	2,821,000
28. Perry 1	Mark III	2,821,000
29. Pilgrim	Mark I	2,821,000
30. Quad Cities 1	do	2,821,000
31. Quad Cities 2	do	2,821,000
32. River Bend 1	Mark III	2,821,000
33. Susquehanna 1	Mark II	2,821,000
34. Susquehanna 2	do	2,821,000
35. Vermont Yankee	Mark I	2,821,000
36. Washington Nuclear 2	Mark II	2,818,000
Other Reactor:		
1. Big Rock Point	GE dry containment	2,821,000

The "Other Reactor" listed in Table V was not included in the fee base because historically Big Rock Point has been granted a partial exemption from the annual fees. The NRC proposes to grant a similar partial exemption in FY 1994 to Big Rock Point, a smaller older reactor, based on a request filed with the NRC in accordance with § 171.11.

Paragraph (b)(3) would be revised to change the fiscal year references from FY 1993 to FY 1994. Paragraph (c)(2) would be amended to show the amount of the surcharge for FY 1994. This surcharge is added to the base annual fee for each operating power reactor shown in Table V. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA–90. The NRC has continued its previous policy decision to recover these costs from operating power reactors.

The FY 1994 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

[Dollars in millions]

Category of costs	FY 1994 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. reviews for DOE/DOD reactor projects, and West Valley Demonstration Project;	$2.4
b. international cooperative safety program and international safeguards activities; and	8.2
c. low level waste disposal generic activities;	6.0
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on Commission policy:	
a. Licensing and inspection activities associated with non-profit educational institutions; and	7.8
b. costs not recovered from Part 171 for small entities	5.3
Total budgeted costs	$29.7

The annual additional charge is determined as follows:

$$\frac{\text{Total budgeted costs}}{\text{Total number of operating reactors}} = \frac{\$29.7 \text{ million}}{108} = \$275{,}000 \text{ per operating power reactor}$$

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,841,000 and an additional charge of $275,000 for a total annual fee of $3,116,000 for FY 1994.

Paragraph (d) would be revised to show, in summary form, the amount of the total FY 1994 annual fee, including the surcharge, to be assessed for each major type of operating power reactor.

Paragraph (e) would be revised to show the amount of the FY 1994 annual fee for nonpower (test and research) reactors. In FY 1994, $373,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those

nonpower reactors subject to fees results in an annual fee of $62,200 per operating license. The Energy Policy Act establishes an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695), final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC intends to continue to grant exemptions from the annual fee to those Federally owned reactors who meet the exemption criteria as specified in § 171.11. The NRC is proposing to amend § 171.11(a)(2) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission.

Section 171.16 Annual Fees

Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government agencies licensed by the NRC.

§ 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. Currently, the NRC assesses two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $250,000 to $3.5 million pay a maximum annual fee of $1,800. A second or lower-tier small entity fee of $400 is in place for small entities with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

Paragraph (d) would be revised to reflect the FY 1994 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1994 generic costs totalling $63.7 million that apply to fuel facilities, uranium recovery facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Fee Category 18 would be amended to assess fees to the Department of Energy (DOE) for use of the general license provided under 10 CFR 40.27. Currently, DOE is billed for the issuance of transportation Certificates of Compliance. The general license fulfills a requirement of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (Pub. L. 95–604) that the perpetual custodian of reclaimed uranium mill tailings piles be licensed by the NRC. The § 40.27 general license covers only post-reclamation closure custody and site surveillance. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. Because DOE now holds an NRC license, it is subject to annual fees. The NRC had previously indicated its intent in the FY 1991 final fee rule to bill DOE for UMTRCA costs once post-closure was achieved and the sites were licensed by the Government (56 FR 31481, July 10, 1991). As a result, DOE would be billed for the costs associated with NRC's UMTRCA review of all activities associated with the facilities assigned to DOE under UMTRCA. As with other licensees, the annual fee for this class of licensees (DOE UMTRCA facilities) will recover the generic and other regulatory costs not recovered through 10 CFR part 170 fees. Because DOE, as a Federal agency, cannot be assessed Part 170 fees under the IOAA, the NRC proposes to assess annual fees for the total costs of DOE UMTRCA activities to DOE.

Tables VI and VII show the NRC program elements and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing and inspection. For transportation, the costs are those budgeted for transportation research, licensing, and inspection. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage research, licensing, and inspection.

TABLE VI.—ALLOCATION OF NRC FY 1994 BUDGET TO FUEL FACILITY BASE FEES [1]

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	Program support $,K	FTE
NMLL (research):				
Radiation protection/health effects	$1,575	5.3	315	1.1
Environmental policy and Decommissioning	2,410	9.0	241	.9
NMLL (RES) program total			556	2.0
NMLL (NMSS)				
Fuel cycle safety and safeguards	4,783	85.8	2,432	57.1
Event evaluation	0	14.9	0	4.2
Decommissioning	2,215	30.8	309	10.5
Uranium recovery (DAM SAFETY)	250	7.6	3	0
NMLL (NMSS) program total			2,744	71.8
NMLL (MSIRIE).				
Incident response			0	1.0
Enforcement			0	1.2
NMLL MSIRIE program total			0	2.2
Total NMLL			3,300	76.0
Total base fee amount allocated to fuel facilities			$20.8	

TABLE VI.—ALLOCATION OF NRC FY 1994 BUDGET TO FUEL FACILITY BASE FEES [1]—Continued

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	Program support $,K	FTE
Less part 170 fuel facility fees			[2] million 4.0 million	
Part 171 base fees for fuel facilities			16.8 million	

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1994 BUDGET TO MATERIAL USERS' BASE FEES [1]

	Total		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
NMLL (Research):				
Materials licensee performance	$450	1.2	$405	1.1
Materials regulatory standards	1,495	12.2	1,346	11.0
Radiation protection/health effects	1,575	5.3	1,134	3.8
Environmental policy and decommissioning	2,410	9.0	1,085	4.1
Total NMLL (RES)			3,970	20.0
NMLL (NMSS):				
Licensing/inspection of materials users	$965	109.3	869	99.5
Event Evaluation		16.2		11.4
Information technology—NMSS	1,100		89	
Decommissioning	2,215	30.8	1,707	12.0
Low level waste—on site disposal	592	14.3	71	2.3
Total NMLL (NMSS)			2,736	125.2
NMLL (MSIRIE):				
Analysis and evaluation of operational data	$186	6.0	167	4.5
Office of Investigations		7.0		6.3
Office of Enforcement	10	6.8	9	5.0
Total NMLL program			$6,882	161.0
Base amount allocated to materials users ($,M)			44.1	
Less part 170 material users fees			[2] million 5.5 million	
Part 171 base fees for material users			38.6 million	

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

The allocation of the NRC's $16.8 million in budgeted costs to the individual fuel facilities is based, as in FY 1991, FY 1992, and FY 1993, primarily on the OBRA–90 conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC safeguards costs (e.g., physical security) are attributable to these facilities. Likewise, more of the safety licensing and inspection costs are allocated to the HEU facilities because more of these resources are used for HEU facilities as compared to other facilities. However, safety program assessment and safety event evaluation costs for fuel facilities are uniformly allocated to HEU and LEU facilities because these activities apply equally to each of the HEU and LEU facilities.

Using this approach, the base annual fee for each facility is shown below.

ANNUAL FEE

	Safeguards and safety
High enriched fuel:	
Nuclear fuel services	$3,176,000
Babcock and Wilcox	3,176,000
Subtotal	6,352,000
Low Enriched Fuel:	
Siemens Nuclear Power	1,429,000
Babcock and Wilcox	1,429,000
General Electric	1,429,000
Westinghouse	1,429,000
Combustion Engineering (Hematite)	1,429,000

ANNUAL FEE—Continued

	Safeguards and safety
General Atomic	1,429,000
Subtotal	8,574,000
UF_6 Conversion	
Allied Signal Corp.	1,114,000
Other fuel facilities (3 facilities at $254,000 each)	762,000
Total	16,802,000

One of Combustion Engineering's (CE) low enriched uranium fuel facilities has not been included in the fee base because of the D.C. Circuit Court of Appeals decision of March 16, 1993, directing the NRC to grant an exemption for FY 1991 to Combustion Engineering for one of its two facilities. As a result of the Court's decision, the NRC proposes to grant an exemption to one of CE's low enriched uranium fuel facilities for FY 1994. The NRC will therefore exclude this facility from the calculation of the FY 1994 annual fees for the low enriched fuel category.

Of the $2.1 million attributable to the uranium recovery class of licensees, about $1.5 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). These costs were previously recovered from operating power reactors because DOE was not an NRC licensee prior to September 1993 and therefore could not be billed under Part 171. In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook Wyoming site had been achieved. It is estimated that approximately 44 percent of the remaining costs of $639,000 for uranium recovery is attributable to uranium mills (Class I facilities). Approximately 39 percent of the $639,000 for uranium recovery is attributable to those solution mining licensees who do not generate uranium mill tailings (Class II facilities). The remaining 17 percent is allocated to the other uranium recovery facilities (e.g. extraction of metals and rare earths). The resulting annual fees for each class of licensee are:

Class I facilities—$94,300
Class II facilities—$41,200
Other facilities— $36,200

The annual fees for FY 1994 for the uranium recovery class of licensees are about 40 percent less than the FY 1992 fees and are about 60 percent higher than the FY 1993 annual fees. The total amount of fees that must be recovered from the uranium recovery class has decreased by about 10 percent compared to FY 1993; however, the annual fee per facility has increased for two basic reasons. First the amount that is expected to be recovered through Part 170 fees has decreased as a result of completing the licensing of the Envirocare 11.e(2) byproduct disposal facility. This requires relatively more costs to be recovered through annual fees. The second cause of the increases is a decrease in the number of licensees in the class to be assessed annual fees for FY 1994.

For spent fuel storage licenses, the generic costs of $2.2 million have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of $363,500.

To equitably and fairly allocate the $38.6 million attributable to the approximately 6,500 diverse material users and registrants, the NRC has continued to base the annual fee on the Part 170 application and inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency. Inspection frequency is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

Annual Fee=(Application Fee+Inspection Fee/Inspection Priority)×Constant+ (Unique Category Costs).

The constant is the multiple necessary to recover $38.6 million and is 2.6 for FY 1994. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1994, unique costs of approximately $2.6 million were identified for the medical improvement program which is attributable to medical licensees. Materials annual fees for FY 1994 are 13–17% higher compared to the FY 1993 annual fees. There are two basic reasons for the changes in the fees from FY 1993. First, the FY 1994 budgeted amount attributable to materials licensees is about 10 percent higher than the comparable FY 1993 amount. Second, the number of licensees to be assessed annual fees in FY 1994 has decreased (from about 6,800 to about 6,500 resulting in a 4% increase in fees). The materials fees must be established at the proposed levels in order to comply with the mandate of OBRA–90 to recover approximately 100 percent of the NRC's FY 1994 budget authority. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

To recover the $4.0 million attributable to the transportation class of licensees, about $923,000 would be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities ($3.1 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $64,700 for users and fabricators and $900 for users only.

The amount or range of the FY 1994 base annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES BASE ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	$3.2 million.
Part 70—Low enriched fuel.	$1.4 million.
Part 40—UF_6 conversion.	$1.1 million.
Part 40—Uranium recovery.	$36,200 to $94,300.
Part 30—Byproduct material.	[1]$970 to $30,900.
Part 71—Transportation of radioactive material.	$900 to $64,700.
Part 72—Independent storage of spent nuclear fuel.	$363,500.

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is $430,500.

Paragraph (e) would be amended to establish the additional charge which is to be added to the base annual fees shown in paragraph (d) of this final rule. The Commission is continuing the approach used in FY 1993 so as to assess the budgeted LLW costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge continues to be shown, for convenience, with the applicable categories in paragraph (d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA–90. For FY 1994, the additional charge recovers approximately 18 percent of the NRC budgeted costs of $8.1 million relating

to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the deletion of LLW disposed by Agreement State licensees. The FY 1994 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

Category of costs	FY 1994 budgeted costs (millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., LLW disposal generic activities	$8.1

Of the $8.1 million in budgeted costs shown above for LLW activities, 82 percent of the amount ($6.7 million) are allocated to the 120 large waste generators (reactors and fuel facilities) included in 10 CFR Part 171. This results in an additional charge of $55,600 per facility. Thus, the LLW charge will be $55,600 per HEU, LEU, UF_6 facility, and each of the other 3 fuel facilities. The remaining $1.4 million is allocated to the material licensees in categories that generate low level waste (965 licensees) as follows: $1,500 per materials license except for those in Category 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,500 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low level waste, is $22,800.

Of the $6.3 million not recovered from small entities, $1.0 million would be allocated to fuel facilities and other materials licensees. This results in a surcharge of $170 per category for each fuel facility and materials licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility (a high enriched fuel fabrication licensee, for example) would pay a base annual fee of $3,176,000 and an additional charge of $55,770 for LLW activities and small entity costs. A medical center with a broad-scope program would pay a base annual fee of $30,900 and an additional charge of $1,670, for a total FY 1994 annual fee of $32,570.

Section 171.17 Proration

10 CFR 171.17 would be amended to add a proration provision for materials licenses and to revise the provision for reactors. The annual fee for materials licenses would be prorated based on applications filed after October 1 of the fiscal year either to reduce the scope of a license or to terminate a license. Those materials licensees who file applications between October 1 and March 31 of the fiscal year to downgrade the license or terminate the license would pay one-half the annual fee stated in § 171.16(d) for the affected fee category(ies). Those materials licensees filing applications to downgrade or terminate a license on or after April 1 of the fiscal year would pay the full annual fee. Those licensees who file for termination or downgrade must also permanently cease operations of those licensed activities during the periods mentioned for the fee to be reduced. Similarly, materials licensees who were issued new licenses or licenses of increased scope during the fiscal year would also be charged a prorated annual fee based on the date of issuance of the new license or license amendment increasing the scope. New materials licenses issued during the period October 1 through March 31 would be assessed one-half of the FY 1994 annual fee stated in § 171.16(d) for the applicable fee categories. New licenses issued on or after April 1 would not be assessed the FY 1994 annual fee. Materials licenses amended during the period October 1 through March 31 to increase the scope would be assessed one-half the annual fee for the new fee category(ies). Materials licenses amended on or after April 1 to increase the scope would not be assessed the annual fee for the new fee category(ies).

The NRC proposes to amend the proration provision in § 171.17 applicable to reactors to provide that for licensees who have requested a license amendment to withdraw operating authority permanently during the FY the annual fee will be prorated based on the number of days during the FY the operating license was in effect before the possession-only license was issued or the license was terminated.

Footnote 1 of 10 CFR 171.16(d) would be amended to provide for a waiver of the annual fees for those licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1993, and permanently cease licensed activities entirely by September 30, 1993. All other licensees and approval holders who held a license or approval on October 1, 1993 would be subject to the FY 1994 annual fees.

Section 171.19 Payment

This section would be revised to give credit for partial payments made by certain licensees in FY 1994 toward their FY 1994 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1994 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee or to make refunds, as necessary. As in FY 1993, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past three years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1994 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1994 budget of $535.0 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Therefore, when developing the annual fees for operating power reactors the NRC continued to consider the various reactor vendors, the types of containment, and the location of the operating power reactors. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1994. The proposed rule results in an increase in the fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170, and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 902).

2. In § 170.3, the definition *special projects* is revised to read as follows:

§ 170.3 Definitions.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical and other report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, and services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators. As used in this part, special projects does not include requests/reports submitted to the NRC:

(1) In response to a Generic Letter or NRC Bulletin which does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1994 budget is $133 per hour.

4. In § 170.21, the introductory paragraph, Category J, Category K, and footnotes 1 and 2 to the table are revised and a new footnote 4 is added to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1 2]
* * * * * * *	
J. Special Projects: [4]	
Approvals and preapplication/licensing activities.	Full cost
Inspections	Full Cost.
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110.	
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application—new license	$8,600.
Amendment	$8,600.
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application—new license	$5,300.
Amendment	$5,300.
3. Application for export of components requiring foreign government assurances only.	
Application—new license	$3,300.
Amendment	$3,300.
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review, or foreign government assurances.	
Application—new license	$1,300.
Amendment	$1,300.
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review.	

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees [1 2]
Amendment	$130

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * * * *

[4] Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;
2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or
3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$570
Renewal	680
Amendment	360
Inspections	670
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	600
Renewal	430
Amendment	330
Inspections	1,200
E. Licenses for construction and operation of a uranium enrichment facility.	
Application	125,000
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize only the possession, use and/or installation of source material for shielding:	
Application—New license	230
Renewal	160
Amendment	270
Inspections	560
C. All other source material licenses:	
Application—New license	2,500
Renewal	1,400
Amendment	450
Inspections	2,500
3 Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	2,700
Renewal	1,700
Amendment	470
Inspections	9,800 [5]
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	1,300
Renewal	2,200
Amendment	600
Inspections	3,000 [5]
C. Licenses issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	3,500
Renewal	3,000
Amendment	490
Inspections	3,400
D. Licenses and approvals issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	1,300
Renewal	550
Amendment	370
Inspections	3,000
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	930
Renewal	760
Amendment	330
Inspections	1,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	1,300
Renewal	1,000
Amendment	330
Inspections	1,300
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	5,300
Renewal	4,800
Amendment	640
Inspections	4,100
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	2,400
Renewal	2,300

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Amendment	800
Inspections	1,100
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	4,600
Renewal	2,700
Amendment	1,100
Inspections	1,000
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	2,100
Renewal	1,400
Amendment	370
Inspections	1,800
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	2,000
Renewal	1,400
Amendment	270
Inspections	1,000
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	4,100
Renewal	2,200
Amendment	630
Inspections	4,700
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	1,400
Renewal	1,500
Amendment	690
Inspections	2,200
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:	
Application—New license	1,700
Renewal	2,100
Amendment	680
Inspections	2,400
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	3,800
Renewal	2,900
Amendment	690
Inspections	3,500 [5]
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	570
Renewal	680
Amendment	360
Inspections	1,500
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	4,000
Renewal	2,100
Amendment	430

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Inspections	2,300
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	1,500
Renewal	1,100
Amendment	250
Inspections	2,800
D. Licenses specifically authorizing the receipt from other persons of byproduct material as defined in Section 11.e.(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	3,700
Renewal	3,900
Amendment	650
Inspections	3,600
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
Inspections	1,300
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	4,500
Renewal	2,900
Amendment	700
Inspections	4,500
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	3,700
Renewal	1,200
Amendment	560
Inspections	2,300
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	2,700
Renewal	3,500
Amendment	500
Inspections	8,700
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	1,100
Renewal	1,400
Amendment	500
Inspections	2,100
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	670
Renewal	700
Amendment	480
Inspections	1,100
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	3,700
Amendment—each device	1,300
Inspections	Full Cost
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	1,900
Amendment—each device	670
Inspections	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	800
Amendment—each source	270
Inspections	Full Cost.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	400
Amendment—each source	130
Inspections	Full Cost.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application—Approval	370
Renewal	280
Amendment	320
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects: [6]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under §72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b).	
Application-new license	8,600
Amendment	8,600
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)–(8).	
Application-new license	5,300
Amendment	5,300
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.	
Application-new license	3,300
Amendment	3,300
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances.	
Application-new license	1,300
Amendment	1,300
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review.	
Amendment	130
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.	
Application (each filing of Form 241)	700
Renewal	N/A
Revisions	200

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Inspections	Fees as specified in appropriate fee categories in this section.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that: (1) applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and (2) applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

(b) *License/approval/review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment fees*—

(1) Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Although a single inspection fee is shown in the regulation, separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 and 6 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the final rules that became effective on June 20, 1984, January 30, 1989, July 2, 1990, August 9, 1991, August 24, 1992, and August 19, 1993 rules, as appropriate. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

[6] Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. In § 171.11, paragraph (a)(2) is revised to read as follows:

§ 171.11 Exemptions.

(a) * * *

* * * * *

(2) Federally-owned and State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that—

(i) Is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(A) A circulating loop through the core in which the licensee conducts fuel experiments;

(B) A liquid fuel loading; or

(C) An experimental facility in the core in excess of 16 square inches in cross-section.

* * * * *

8. In § 171.15, paragraphs (a), (b)(3), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11(a)(1) and (a)(2).

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base FY 1994 annual fees for each operating power reactor subject to fees under this section and which must be collected before September 30, 1994, are shown in paragraph (d) of this section.

(c) * * *

(2) The FY 1994 surcharge to be added to each operating power reactor is $275,000. This amount is calculated by dividing the total cost for these activities ($29.7 million) by the number of operating power reactors (108).

(d) The FY 1994 part 171 annual fees for operating power reactors are as follows:

PART 171 ANNUAL FEES BY REACTOR CATEGORY [1]

[Fees in thousands]

Reactor vendor	Number	Base fee	Added charge	Total fee	Estimated collections
Babcock/Wilcox	7	$2,840	275	$3,115	$21,805
Combustion Eng.	15	2,840	275	3,115	46,725
GE Mark I	24	2,821	275	3,096	74,304
GE Mark II	8	2,821	275	3,096	24,768
GE Mark III	4	2,821	275	3,096	12,384
Westinghouse	50	2,841	275	3,116	$155,800
Totals	108				$335,786

[1] Fees assessed will vary for plants west of the Rocky Mountains and for Westinghouse plants with ice condensers.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	$62,200
Test reactor	$62,200

* * * * *

9. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1994 as follows:

	Maximum annual fee per licensed category
Small Businesses and Small not-for-profit Organizations (Gross Annual Receipts):	
$250,000 to $3.5 million	$1,800
Less than $250,000	400
Private Practice Physicians (Gross Annual Receipts):	
$250,000 to $1.0 million	1,800
Less than $250,000	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less	1,800

* * * * *

(4) For FY 1994, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1994 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses			Annual Fees [1 2 3]
1. Special nuclear material:			
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.			
High Enriched Fuel	License No.	Docket No.	
Babcock and Wilcox	SNM–42	70–27	$3,176,000
Nuclear Fuel Services	SNM–124	70–143	3,176,000
Low Enriched Fuel:			
B&W Fuel Company	SNM–1168	70–1201	1,429,000
Combustion Engineering (Hematite)	SNM–33	70–36	1,429,000
General Electric Company	SNM–1097	70–1113	1,429,000
Siemens Nuclear Power	SNM–1227	70–1257	1,429,000
Westinghouse Electric Company	SNM–1107	70–1151	1,429,000
General Atomic	SNM–696	70–734	1,429,000
Surcharge			55,770
A. (2) All other special nuclear materials licenses not included in 1.A.(1) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form			254,000
Surcharge			55,770
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)			363,500
Surcharge			1,670
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers			1,800
Surcharge			170
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)			2,200
Surcharge			1,670
E. Licenses for the operation of a uranium enrichment facility			[11] N/A
2. Source material:			
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride			1,114,000
Surcharge			55,770
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.			
Class I facilities [4]			94,300
Class II facilities [4]			41,200
Other facilities			36,200
Surcharge			170
B. Licenses which authorize only the possession, use and/or installation of source material for shielding			800
Surcharge			170
C. All other source material licenses			8,700
Surcharge			1,670
3. Byproduct material:			
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution			19,700
Surcharge			1,670
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution			6,000
Surcharge			1,670
C. Licenses issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license			12,000
Surcharge			1,670
D. Licenses and approvals issued pursuant to §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license			6,000
Surcharge			170
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)			3,500
Surcharge			170
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes			4,500
Surcharge			170

G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	24,400
Surcharge	170
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	6,800
Surcharge	170
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	12,500
Surcharge	170
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	6,600
Surcharge	170
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	6,100
Surcharge	170
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to part 30 and 33 of this chapter for research and development that do not authorize commercial distribution	14,700
Surcharge	1,670
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	5,100
Surcharge	1,670
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D	6,000
Surcharge	1,670
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license	19,000
Surcharge	170
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,300
Surcharge	170
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	130,200[5]
Surcharge	1,670
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	16,400
Surcharge	1,670
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,500
Surcharge	1,670
D. Licenses specifically authorizing the receipt, from other persons, of byproduct material as defined in Section 11.e.(2) of the Atomic Energy Act for possession and disposal except those licenses subject to the fees in Category 2.A.(2)	8,700
Surcharge	1,670
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	12,700
Surcharge	170
B. Licenses for possession and use of byproduct material for field flooding tracer studies	15,400
Surcharge	1,670
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	15,600
Surcharge	1,670
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	16,900
Surcharge	170

B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license[9]	30,900
Surcharge	1,670
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license[9]	5,900
Surcharge	170
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	2,100
Surcharge	170
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	9,600
Surcharge	170
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	4,900
Surcharge	170
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,100
Surcharge	170
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,000
Surcharge	170
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers. Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs.	
Users and Fabricators	64,700
Users	900
Surcharge	170
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	363,500
Surcharge	170
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72.	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	430,500
Surcharge	22,970
18. Department of Energy:	
a. Certificates of Compliance	[10] 923,000
b. Uranium Mill Tailing Radiation Control Act (UMTRCA) actions	1,449,000
Surcharge	170

[1] Annual fees will be assessed based on whether a licensee holds a valid license with the NRC which authorizes possession and use of radioactive material. Annual fees for licenses terminated or downgraded during the fiscal year and for new licenses issued or licenses whose scope increased during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FYs 1995 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, part 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is proposed for each category, for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $55,600 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of $1,500 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of $22,800 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of $170 has been added to each fee Category, except Categories 1E, 10.A., 11., 12., 13.A., 14., 15. and 16., since there is no annual fee for these categories. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the $170 additional charge.

* * * * *

10. Section 171.17 is revised to read as follows:

§ 171.17 Proration.

Annual fees will be prorated for NRC licensees as follows:

(a) *Reactors.* The annual fee for a reactor (power or nonpower) licensee that is subject to fees under this part that is granted a license to operate on or after October 1 of a FY is prorated on the basis of the number of days remaining in the FY. Thereafter, the full fee is due and payable each subsequent FY. Licensee who have requested amendment to withdraw operating authority permanently during the FY will be prorated based on the number of days during the FY the license was in effect before the possession only license was issued or the license was terminated.

(b) *Materials licenses.* The annual fee for a materials license that is subject to fees under this part that is granted a license on or after October 1 of a FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Similarly, licenses amended during the period from October 1 through March 31 to increase the scope will be assessed one-half the annual fee for the new category(ies) for that FY. Licenses amended on or after April 1 to increase the scope of the license will not be assessed an annual fee for the new category(ies) for that FY. Thereafter, the full fee is due and payable each subsequent FY. Licenses that are downgraded or terminated after October 1 of a FY will be prorated on the basis of when the application for downgrade or termination is filed with the NRC. Licenses for which applications for downgrade or termination are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for downgrade or termination are filed on or after April 1 of the FY are assessed the full annual fee for that FY.

11. In § 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FY 1994 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1994 through 1998, annual fees in the amount of $100,000 or more and described in the **Federal Register** Notice pursuant to § 171.13, must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than $100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 29th day of April, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Appendix A to This Proposed Rule Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241, December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

(1) A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

(2) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

(3) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(4) A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by

assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount collected was approximately $445 million; for FY 1992, approximately $492.5 million; for FY 1993 about $518.9 million and the amount to be collected in FY 1994 is approximately $513 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) and in FY 1993 (58 FR 38666; July 20, 1993) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, and FY 1993. The NRC has used the same methodology established in the FY 1991, FY 1992, and FY 1993 rulemakings to establish the proposed fees to be assessed for FY 1994. The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146, D.C. Cir. 1993). The FY 1993 LLW allocation method has been continued in the FY 1994 proposed rule.

II. Impact On Small Entities

The comments received on the proposed FY 1991, FY 1992, and FY 1993 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, and FY 1993 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, the NRC estimates that about 18 percent (approximately 1,300 licensees) qualify as small entities. This estimate is based on the number of small entity certifications filed in response to the FY 1991, FY 1992, and FY 1993 fee rules. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, and FY 1993 proposed fee rules indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past three years, approximately 2,600 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472, July 10, 1991) in the FY 1992 rule (57 FR 32691, July 23, 1992 and in the FY 1993 rule (58 FR 38666, July 20, 1993). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991, FY 1992, and FY 1993 evaluation of the these alternatives. Based on that reexamination, the NRC continues to support the previous conclusion. That is, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is proposing to continue for FY 1993, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1994, the NRC proposes to rely on the analysis previously completed that established a maximum annual fee for a small entity by comparing NRC license and inspection fees under 10 CFR Part 170 with Agreement State fees for those fee categories that are expected to have a substantial number of small entities. Because these fees have been charged to small entities, the NRC continues to believe that these fees, or any adjustments to these fees during the past

year, do not have a significant impact on them. In issuing this proposed rule for FY 1994, the NRC concludes that the proposed materials license and inspection fees do not have a significant impact on a substantial number of small entities and that the maximum small entity fee of $1,800 be maintained to alleviate the impact of the fees on small entities.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1994 costs ($33.3 million of the total $38.6 million) attributable to them. Therefore, the NRC is proposing to continue, for FY 1994, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other materials licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of $1,800 for small entities, when added to the part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992 and FY 1993, the NRC will continue the lower-tier small entity fee of $400 for small entities with relatively low gross annual receipts for FY 1994. This lower tier small entity fee was established in the final rule published in the **Federal Register** of April 17, 1992 (57 FR 13625).

In establishing the annual fee for lower tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA–90. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users were used to measure the reduction in fees because they represent about 40 percent of the materials licensees and most likely would include a larger percentage of lower tier small entities than would other classes of materials licensees. The Commission is continuing an annual fee of $400 for the lower tier small entities to ensure that the lower tier small entities receive a reduction (75 percent for small gauge users) substantial enough to mitigate any severe impact. Although other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts of less than $250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower tier small entity annual fee of $400 for small businesses and non-profit organizations with gross annual receipts of less than $250,000, and small governmental entities with a population of less than 20,000, will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, the FY 1992, and the FY 1993 fee rules in this proposed rule establishing the FY 1994 fees. Therefore, the analysis and conclusions established in the FY 1991, the FY 1992, and the FY 1993 rules remain valid for this proposed rule for FY 1994.

[FR Doc. 94–10916 Filed 5–9–94; 8:45 am]
BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–11]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received July 11, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. 27657, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C. on May 3, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27652

Petitioner: Para-Gear Equipment Company, Inc. and The Parachute Industry Association

Regulations Affected: 14 CFR part 65, subpart F

Description of Rulechange Sought: To amend the certification requirements for parachute riggers.

[FR Doc. 94–11278 Filed 5–9–94; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANM–26]

Proposed Amendment to Class E Airspace; Trinidad, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Trinidad, Colorado, Class E airspace to provide controlled airspace for a new instrument approach procedure at the Trinidad, Perry Stokes Airport, Colorado. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before June 6, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–26, 1601 Lind Avenue S.W. Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–26, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone: (206) 227–2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–26." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Trinidad, Colorado, to provide controlled airspace for a new instrument approach procedure at the Perry Stokes Airport. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and certain airspace extending upward from the surface of the earth and from 700 feet or more above the surface of the earth is now designated Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from the surface of the earth and from 700 feet or more above the surface of the earth are published in Paragraphs 6002 and 6005 respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class E Airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM CO E2 Trinidad, CO [Revised]

Trinidad, Perry Stokes Airport, CO
(lat. 37°15′36″ N, long. 104°20′24″ W)
Trinidad NDB
(lat. 37°18′22″ N, long. 104°20′00″ W)

That airspace extending upward from the surface within a 4.2-mile radius of the Perry Stokes Airport, and within 2.6 miles each side of the 355° bearing from the Trinidad NDB extending from the 4.2-mile radius to 7 miles north of the NDB.

* * * * *

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

* * * * *

ANM CO E5 Trinidad, CO [Revised]

Trinidad, Perry Stokes Airport, CO
(lat. 37°15′36″ N, long 104°20′24″ W)
Trinidad NDB
(lat. 37°18′22″ N, long 104°20′00″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Perry Stokes Airport and within 3.1 miles each side of the 355° bearing from the Trinidad NDB extending from the 6.7-mile radius to 10 miles north of the NDB; that airspace extending upward from 1,200 feet above the surface within 10.4 miles west and 16.8 miles east of the 355° and 175° bearing from the Trinidad NDB extending from 19.7 miles south to 28 miles north of the NDB.

* * * * *

Issued in Seattle, Washington, on April 21, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–11285 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–7–94]

RIN 1545–AS49

Arbitrage Restrictions on Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments. The text of the temporary regulations also serves as a portion of the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by July 11, 1994.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, POB 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R (FI–7–94), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: William P. Cejudo at 202–622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is in § 1.148–4T(h)(2)(ix). This information is required by the IRS to verify that an issuer of tax-exempt bonds is properly complying with the arbitrage restrictions under section 148. The recordkeepers are States and political subdivisions that issue bonds and entities that issue bonds on behalf of States or political subdivisions.

Estimated total annual recordkeeping burden: 6000 hours.

Estimated average annual burden per recordkeeper: 2 hours.

Estimated number of recordkeepers: 3000.

Background

Sections 1.103–8, 1.148–1T, 1.148–2T, 1.148–3T, 1.148–4T, 1.148–5T, 1.148–6T, 1.148–9T, 1.148–10T, 1.148–11T, 1.149(d)–1T, and 1.150–1T published in the rules and regulations portion of this issue of the **Federal Register** are issued to provide guidance on certain aspects of the arbitrage and related restrictions under sections 103, 148, 149(d), and 150 of the Internal Revenue Code. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

This document also proposes to amend the definition of "investment-type property" under the arbitrage regulations. Under § 1.148–1T, which appears elsewhere in this issue of the **Federal Register** and serves as a portion of the comment document for this notice of proposed rulemaking, the term "investment-type property" includes a contract that would be a hedge except that it contains a significant investment element.

For an issuer borrowing at tax-exempt rates, paying for an interest rate cap through an up-front payment or in annual installments presents concerns regarding the extent to which the issuer is receiving an arbitrage benefit similar to the benefit obtained by making a prepayment. This arbitrage benefit arises to the extent that payments for the interest rate cap are made earlier than the period to which the cap relates (e.g., an up-front payment for the portion of the cap fee that relates to later years under the cap).

The proposed regulations provide specific situations in which interest rate caps contain a significant investment element, and, therefore, will be treated as investment-type property. First, the issuer may not pay for the cap more quickly than in level annual installments. Second, the cap may not hedge a bond unless that bond is a variable rate debt instrument within the meaning of the original issue discount regulations. Finally, the cap rate generally cannot be less than the on-market swap rate. These provisions would apply prospectively to bonds sold after the adoption of final regulations.

Special Analyses

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

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is William P. Cejudo, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.103–8 (a)(5) is revised as follows:

§ 1.103–8 Interest on bonds to finance certain exempt facilities.

[The text of proposed paragraph (a)(5) is the same as the text of § 1.103–8T(a)(5) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.148–1 is amended as follows:

1. Paragraph (b) is amended by removing the definition of *investment-type property*.

2. Paragraph (e) is added to read as follows:

§ 1.148–1 Definitions and elections.

* * * * *

(e) *Investment-type property*—(1) *In general.* Investment-type property includes any property, other than property described in section 148(b)(2)(A), (B), (C), or (E), that is held principally as a passive vehicle for the production of income.

(2) *Non-customary prepayments.* Except as otherwise provided, a prepayment for property or services is investment-type property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. A prepayment is not investment-type property if—

(i) The prepayment is made for a substantial business purpose other than investment return and the issuer has no commercially reasonable alternative to the prepayment, or

(ii) Prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing.

(3) *Certain hedges.* Investment-type property also includes a contract that would be a hedge (within the meaning of § 1.148–4(h)) except that it contains a significant investment element. An interest rate cap contains a significant investment element if the payments for the cap are made more quickly than in level annual installments over the term of the cap or the cap hedges a bond that is not a variable rate debt instrument under § 1.1275–5. In addition, a cap generally contains a significant investment element if the cap rate is less than the on-market swap rate on the date the cap is entered into. This paragraph (e)(3) applies to bonds sold after [*Insert the date 30 days after the date of publication of final regulations in the* **Federal Register**].

Par. 4. Section 1.148–1 is further amended as follows:

§ 1.148–1 Definitions and elections.

[The text of the further amendments proposed for this section is the same as the text of § 1.148–1T published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.148–2 is amended as follows:

§ 1.148–2 General arbitrage yield restriction rules.

[The text of the amendments proposed for this section is the same as the text of § 1.148–2T published elsewhere in this issue of the **Federal Register**].

Par. 6. Section 1.148–3 is amended as follows:

§ 1.148–3 General arbitrage rebate rules.

[The text of the amendments proposed for this section is the same as the text of § 1.148–3T published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 1.148–4 is amended as follows:

§ 1.148–4 Yield on an issue of bonds.

[The text of the amendments proposed for this section is the same as the text of § 1.148–4T published elsewhere in this issue of the **Federal Register**].

Par. 8. Section 1.148–5 is amended as follows:

§ 1.148–5 Yield and valuation of investments.

[The text of the amendments proposed for this section is the same as the text of § 1.148–5T published elsewhere in this issue of the **Federal Register**].

Par. 9. Section 1.148–6 is amended as follows:

§ 1.148–6 General allocation and accounting rules.

[The text of the amendments proposed for this section is the same as the text of § 1.148–6T published elsewhere in this issue of the **Federal Register**].

Par. 10. Section 1.148–9 is amended as follows:

§ 1.148–9 Arbitrage rules for refunding issues.

[The text of the amendments proposed for this section is the same as the text of § 1.148–9T published elsewhere in this issue of the **Federal Register**].

Par. 11. Section 1.148–10 is amended as follows:

§ 1.148–10 Anti-abuse rules and authority of Commissioner.

[The text of the amendments proposed for this section is the same as the text of § 1.148–10T published elsewhere in this issue of the **Federal Register**].

Par. 12. Section 1.148–11 is amended as follows:

§ 1.148–11 Effective dates.

[The text of the amendments proposed for this section is the same as the text of § 1.148–11T published elsewhere in this issue of the **Federal Register**].

Par. 13. Section 1.149(d)–1 is amended as follows:

§ 1.149(d)–1 Limitations on advance refundings.

[The text of the amendments proposed for this section is the same as the text of § 1.149(d)–1T published elsewhere in this issue of the **Federal Register**].

Par. 14. Section 1.150–1 is amended as follows:

§ 1.150–1 Definitions.

[The text of the amendments proposed for this section is the same as the text of § 1.150–1T published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–11103 Filed 5–5–94; 2:17 pm]

BILLING CODE 4830–01–U

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26 CFR Part 1

[IL–21–91]

RIN 1545–AS24

Imposition of Accuracy-Related Penalty; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations that provide guidance on the

imposition of the accuracy-related penalty.

DATES: The public hearing will be held on Monday, September 19, 1994, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, August 29, 1994.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R [IL-21-91], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations under sections 6662(e) and (h), and 6664(c). These proposed regulations appeared in the **Federal Register** for Wednesday, February 2, 1994 (59 FR 4876).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, August 29, 1994, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject. Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94-11141 Filed 5-9-94; 8:45 am]

BILLING CODE 4830-01-P

26 CFR Part 31

[IA-8-92]

RIN 1545-AR72

Taxpayer Identification Number (TIN) Matching Program; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the establishment of a Taxpayer Identification Number (TIN) matching program.

DATES: The public hearing originally scheduled for Friday, May 20, 1994, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 3406(i) of the Internal Revenue Code. A notice of proposed rulemaking by cross-reference to temporary regulations and public hearing appearing in the **Federal Register** for Tuesday, March 22, 1994 (59 FR 13470), announced that a public hearing on the proposed regulations would be held on Friday, May 20, 1994, beginning at 10 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Friday, May 20, 1994, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 94-11142 Filed 5-9-94; 8:45 am]

BILLING CODE 4380-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME-5-1-5497; A-1-FRL-4883-5]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Presque Isle Nonattainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing full approval of the State implementation plan (SIP) submitted by the State of Maine to satisfy certain Federal requirements for the Presque Isle nonattainment area. The purpose of the Federal requirements is to bring about the attainment of the National ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). EPA also proposes to modify the borders of the Presque Isle nonattainment area to more closely contain the actual area where PM-10 concentrations approach ambient standards. EPA also proposes to approve an update of Maine's emergency episode regulation applicable state-wide. This action is being taken under the Implementation Plans section of the Clean Air Act.

DATES: Comments on this proposed action must be received in writing by July 11, 1994. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director; Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203-2211. Copies of the State's submittal and EPA's technical support document are available for inspection by appointment during normal business hours at Air, Pesticides, and Toxics Management Division; U.S. Environmental Protection Agency, Region I; One Congress Street, 10th floor; Boston, Massachusetts; and at the Bureau of Air Quality Control; Department of Environmental Protection; 71 Hospital Street; Augusta, Maine 04333.

FOR FURTHER INFORMATION CONTACT: Brian Hennessey, (617)565-3223.

SUPPLEMENTARY INFORMATION:

Background

Part D, subparts 1 and 4 of title I of the Act set out air quality planning requirements for moderate PM-10 nonattainment areas. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. In this rulemaking action on

the Maine moderate PM–10 SIP, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, before taking final action on this proposal, EPA will consider any timely submitted comments.

By November 15, 1991, States containing initial moderate PM–10 nonattainment areas were required to submit, among other things, the following:

Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 [see section 189(a)]. Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–13544.

Summary of Maine's SIP Submittal

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). In today's action, EPA is proposing to grant approval of the plan revisions submitted to EPA on August 14, 1991 and October 22, 1991, which completed the attainment plan for Presque Isle by meeting all of the applicable requirements of the Act. Interested parties should consult the Technical Support Document (TSD) dated January 2, 1994 or Maine's submission for details on the aspects of Presque Isle's SIP summarized in the following paragraphs.

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA 6 months after receipt of the submission.

The State of Maine held a public hearing on July 31, 1990 to entertain public comment on the implementation plan proposed for Presque Isle. Following the public hearing the plan was adopted by the Maine Department of Environmental Protection (DEP) on March 11, 1991 and submitted to EPA on August 14, 1991 as a proposed revision to the SIP by the Governor's designee, the Director of the Bureau of Air Quality Control. On August 22, 1990, the State of Maine held a public hearing on changes to its emergency episode regulation concerning PM–10. The Maine Board of Environmental Protection adopted the revised emergency episode regulation on October 10, 1990, and the Governor's designee submitted it to EPA on October 22, 1991 as a proposed revision to the SIP.

The submittals were reviewed by EPA to determine completeness, in accordance with the criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). They were found to be complete and a letter dated January 13, 1992, from the EPA Regional Administrator informed the Governor's designee that the submittals had been determined complete and explained how the review process would proceed. In today's action EPA proposes to approve Maine's PM–10 SIP submittal for Presque Isle and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because such inventories are necessary to an area's attainment demonstration, the emissions inventories must be received with the attainment SIP submission (see 57 FR 13539).

Maine submitted an emissions inventory for base year 1988. Entrainment of dust by vehicular traffic over paved streets contributed 3007 tons of the base year actual PM–10 emissions, which totalled 3436 tons. Point sources contributed 171 tons, and area sources, mainly oil combustion at industrial and commercial facilities, added 67 tons more.

EPA could not duplicate Maine's inventory of 1988 base year PM–10 emissions, but for 1989 estimated that entrained road dust contributed 2884 tons to the nonattainment area's 3163 ton actual PM–10 emission total. Although section 172(c)(3) requires that the inventory be "current," an analysis based on receptor modeling is better supported by an inventory for the period subject to that analysis, in this case 1987–1990. EPA believes a 1989 inventory base year is a reasonable compromise between the requirements for a current inventory and the need to perform receptor modeling on PM–10 samples collected in earlier years. This review satisfied EPA that Maine's inventory was sufficiently accurate and comprehensive for determining the adequacy of the attainment demonstration for Presque Isle consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act.[2] Therefore, EPA is

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

[2] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM–10

Continued

proposing to approve the emissions inventory. The TSD has further details.

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

The submission attributed highest PM–10 concentrations in Presque Isle to the large amounts of antiskid materials which the city must use for snow and ice control each winter. Diesel exhaust contributes to high PM–10 in much smaller but detectable amounts. No other sources or source categories impact high PM–10 levels.

The submission includes a memorandum of understanding (MOU) by which the City of Presque Isle, the Maine Department of Transportation, and DEP apply measures which will reduce the entrainment of spent antiskid materials by vehicular traffic in central Presque Isle. At traffic levels projected for 2001, these control measures, described in the section on enforceability issues below, reduce allowable PM–10 emissions by 1800 tons annually. DEP determined that further control of diesel exhaust or point source emissions would not expedite attainment of, or maintain, PM–10 NAAQS in Presque Isle. The TSD discusses individual source contributions more fully and explains why other available control measures were not implemented. The implementation of Maine's control strategy in its PM–10 nonattainment plan control strategy provides for attainment of the PM–10 NAAQS and will maintain compliance with standards through January 1, 1998, as EPA requires. By this document, EPA is proposing to approve the control strategy as meeting RACM and RACT requirements.

4. Demonstration

As noted, initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The Maine DEP submitted an attainment demonstration based on a determination of PM–10 design concentrations based on 6 years of PM–10 measurements. Design concentrations lower than the NAAQS. DEP analyzed PM–10 nonattainment in Presque Isle with a microinventory of PM–10 emissions, optical and scanning electron/energy dispersive electroprobe microscopy of PM–10 filters, and analyses of aerometric data collected since 1980. Version 7.0 of the Chemical Mass Balance Model (CMB7) was the primary means by which DEP examined and modeled maintenance of the 24-hour PM–10 NAAQS, however.

The 24-hour PM–10 NAAQS is 150 micrograms per cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR 50.6). Based on 1986–88 data, the 24-hour design concentration for Presque Isle was 140 $\mu g/m^3$. This demonstrates, and all later data confirms, that Presque Isle is not violating the 24-hour PM–10 NAAQS. The annual PM–10 NAAQS is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$. The annual design concentration of 27 $\mu g/m^3$ for 1988 demonstrates that Presque Isle is not violating the annual PM–10 NAAQS.

An analysis of DEP's CMB7 receptor modeling indicates that the control strategy, summarized above in the section titled "RACM (including RACT)," will maintain PM–10 NAAQS in Presque Isle to January 1, 1998, area-averaged growth rates assumed. This meets the EPA requirement for a minimum 3-year maintenance projection beyond the statutory December 31, 1994 attainment deadline. The TSD provides more details on EPA's review of the maintenance demonstration and the control strategy used.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act).

An analysis of air quality and emissions data for Presque Isle demonstrates that high 24-hour PM–10 concentrations are solely attributable to direct particulate matter emissions from entrainment of snow and ice control materials by traffic on paved roads and from diesel exhaust. EPA has determined that gaseous emissions, such as VOC, SO_2, and NO_2, do not form PM–10 and contribute to PM–10 levels above the NAAQS in Presque Isle. Consequently, stationary sources in Presque Isle need no further emission controls for possible PM–10 precursors. The TSD contains a further discussion of the data and analyses addressing the contribution of possible precursor sources in this area.

Note that while EPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area regarding the impact of PM–10 precursors. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress

Section 171(1) defines reasonable further progress (RFP) as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by December 31, 1994 (see section 189(c) of the Act).

In implementing RFP for this initial moderate area, EPA has reviewed the attainment demonstration and control strategy for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the PM–10 NAAQS by December 31, 1994 (see section 171(1)). The State of Maine's PM–10 SIP requires that all measures required for attainment be fully implemented effective December 1, 1991. EPA considers this to meet the requirement for quantitative milestones because no more expeditious implementation schedule could be prescribed. Maine has until early 1995 (i.e., shortly after the statutory attainment date) to report to EPA whether Presque Isle has actually complied with its single milestone.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State

SIP Development Guideline. The guidance provided in this document appears to be consistent with the Act.

and EPA (See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply exclusively to the entrainment of spent snow and ice control materials from public paved roads in central Presque Isle. Under part B of a memorandum of understanding (MOU) which DEP entered into on March 11, 1991, with the City of Presque Isle and the Maine Department of Transportation, the city must use improved (i.e., low entrainment) antiskid materials on its roads. As noted previously, the MOU is included in DEP's submission and will be incorporated into the SIP. Between December 1 and May 1 each year, as a surrogate for PM–10 emission limitations, the city must also maintain silt loadings on dry roads below 10 g/m^2. Part B lists the streets where these requirements apply. DEP or EPA may require Presque Isle to test antiskid material stockpiles by methods prescribed in Part B, keep records, and report records and test results. Part B also specifies the method DEP must use to determine compliance by the city with the silt loading limit.

Consistent with the attainment demonstration described above, the MOU requires that all affected activities must be in full compliance with the applicable SIP provisions by December 1, 1991. In addition to the applicable control measures, this includes the applicable record-keeping requirements which are addressed in the supporting technical information. With the compliance methods prescribed, EPA believes that the requirements in part B of the MOU will be achievable by the city and enforceable by either EPA or DEP. Moreover, DEP has a regional office in Presque Isle and its personnel can ensure that all signatories meet their obligations under the MOU. Appendix B to EPA's TSD examines the enforceability of Presque Isle's PM–10 SIP in greater detail and refers interested parties to salient sections of Maine's submittal.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures. See generally 57 FR 13543–14544. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline.

As noted above, EPA indicated that States containing initial moderate nonattainment areas, including Maine, did not need to submit the contingency measures required under 172(c)(9) until November 15, 1993 (see 57 FR 13543 (April 16, 1992)). DEP's SIP submission for the Presque Isle nonattainment area contained no contingency measures. There is nothing else in the Act nor in the actions that are subject to this document that relieves Maine of the statutory obligation to meet the contingency measures requirement. On January 26, 1994, EPA sent Maine a formal finding of failure to submit PM–10 contingency measures for the Presque Isle nonattainment area. Maine will be providing contingency measures, pursuant to section 172(c)(9), in a separate submittal. EPA will act on this requirement in a separate document.

9. Other Section 110 Requirements

DEP has also revised its Chapter 109 "Emergency Episode Regulation." The regulation now contains the PM–10 alert, warning and emergency levels that appear in EPA's "Example Regulations for Prevention of Air Pollution Emergency Episodes" (appendix L to part 51). The regulation continues to apply statewide and with its adoption DEP has met all section 110 requirements that currently apply to the Presque Isle PM–10 nonattainment area.

10. Boundaries of the Nonattainment Area

If a State makes a persuasive demonstration (SIP equivalent) over the proper scope of a disputed nonattainment area designation, EPA will consider whether it would be appropriate to correct the error relying on the authority in section 110(k)(6) of the Act. (See 56 FR 37656 (8 August 1991).) DEP's SIP submission includes a request that EPA replace the present borders of the nonattainment area, which consist of township boundaries enclosing 80 square miles, with borders which are comprised of a series of streets bounding an area of roughly 0.6 square mile. The attainment demonstration in Presque Isle's PM–10 SIP supplants past DEP submittals on the spatial extent of elevated PM–10 levels in Presque Isle. The modeling in the SIP submittal includes a detailed, gridded PM–10 microinventory and shows that the 0.6 square mile area mentioned above circumscribes the area of high emission densities and ambient PM–10 levels. Since Presque Isle is not actually violating the PM–10 NAAQS, EPA believes it is appropriate to redefine the nonattainment area as comprising just that area containing those heavily trafficked paved roads, which are shown to dominate PM–10 air quality in downtown Presque Isle, and which the MOU will control. Therefore, pursuant to section 110(k)(6) of the Act, EPA is proposing to modify the boundaries of the Presque Isle nonattainment area as DEP requests.

Implications of EPA's Proposed Approval

The EPA is proposing to approve the plan revisions submitted to EPA for the Presque Isle nonattainment area on August 14, 1991, and the updated emergency episode requirements applicable statewide submitted on October 10, 1991. EPA also proposes to alter the boundaries of the Presque Isle PM–10 nonattainment area as requested by DEP. Among other things, the State of Maine has demonstrated that the Presque Isle moderate PM–10 nonattainment area will achieve compliance with the PM–10 NAAQS by December 31, 1994 and maintain compliance at least until 1 January 1998. As noted, additional submittals for the Presque Isle nonattainment area are due at later dates. The EPA will determine the adequacy of any such submittal as appropriate.

Request for Public Comments

The EPA is requesting comments on all aspects of today's proposal. EPA will consider any written comments received by July 11, 1994 at the Region I office listed in the ADDRESSES section of this document.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 1 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds.

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

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements ofsection 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 25, 1994.

Harley Laing,

Acting Regional Administrator, Region I.

[FR Doc. 94–11274 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR PART 180

[OPP–300338; FRL–4777–5]

RIN No. 2070–AC18

Diethylene Glycol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the current exemption from the requirement of a tolerance for residues of diethylene glycol by expanding its use as an inert ingredient, to read "deactivator, adjuvant for formulations used before crop emerges from the soil." Texaco Chemical Co. requested this regulation.

DATES: Comments, identified by the document control number [OPP-300338], must be received on or before June 9, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall, Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: Texaco Chemical Co., P.O. Box 27707, Houston, TX 77227-7707, has submitted pesticide petition (PP) 2E4191 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by amending the current exemption from the requirement of a tolerance for residues of diethylene glycol by expanding its use as an inert ingredient, to read "deactivator, adjuvant for formulations used before crop emerges from the soil."

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support a proposed tolerance exemption for diethylene glycol will not need to be submitted because the addition of the adjuvant use in pesticide formulations applied to preemergent crops only will not significantly increase exposure to this inert ingredient. EPA has found that, when used in accordance with good agricultural practice, this ingredient does not pose a risk to human health or the environment. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300338]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or

establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: April 27, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Diethylene glycol		Deactivator, adjuvant for formulations used before crop emerges from soil.
* *	* * *	* *

* * * * *

[FR Doc. 94-11195 Filed 5-9-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 6E3447/P573; FRL-4744-5]

RIN No. 2070-AC18

Pesticide Tolerance for Cadusafos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a permanent tolerance be established for residues of the insecticide/nematicide cadusafos, *O*-ethyl *S,S*-di-*sec*-butyl phosphorodithioate, in or on the raw agricultural commodity bananas. The proposed regulation to establish a maximum permissible level for residues of the insecticide/nematicide in or on the commodity was requested in a petition submitted by the FMC Corp.

DATES: Comments, identified by the document control number [PP 6E3447/P573], must be received on or before June 9, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600.

SUPPLEMENTARY INFORMATION: EPA issued a rule in the Federal Register of October 23, 1992 (57 FR 48327), which announced its decision to establish a time-limited tolerance for residues of the pesticide cadusafos on bananas for a period extending to October 24, 1994. The Agency limited the period of time that the regulation was to be in effect because of the need for confirmatory usage data required to ensure that cadusafos was being applied on bananas in a manner that would not result in an increase in the anticipated residue level.

The FMC Corp., Agricultural Chemicals Group, 200 Market St., Philadelphia, PA 19103, has submitted the confirmatory usage data and has requested that EPA, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a permanent tolerance for residues of the nematicide/insecticide cadusafos in or on the RAC bananas at 0.01 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog feeding study with a no-observed-effect level (NOEL) at 0.001 milligram/kilogram/day (mg/kg/day). The lowest effect level (LEL) was 0.005 mg/kg/day for cholinesterase (ChE) inhibition. Levels tested were 0.0002, 0.001, 0.005, and 0.02 mg/kg.

2. A 2-year rat feeding carcinogenicity study with a NOEL of 1.0 ppm for both systemic effects and ChE inhibition. The study was negative for carcinogenic effects under the conditions of the study at all feeding levels. Systemic effects observed at the 5.0 ppm dose level consisted of decreased locomotion and elevated clinical chemistry values for serum aspartate aminotransferase (SGOT) in females. Levels tested were 0.1, 0.5, 1.0, and 5.0 ppm.

3. A 2-year mouse carcinogenic study which was negative for carcinogenic effects under the conditions of the study at all feeding levels. Levels tested were 0.1, 0.5, 1.0, and 5.0 ppm.

4. A two-generation reproduction study in rats with a NOEL of 0.1 ppm (equivalent to 0.005 mg/kg/day) for reproductive effects consisting of a significant decrease in the live birth index at the 0.5 ppm (0.025 mg/kg)

level. Levels tested were 0.1, 0.5, and 5.0 ppm.

5. A rat teratology study with a NOEL of 6.0 mg/kg/day for developmental effects associated with the toxicity of cadusafos. Levels tested were 0.2, 6.0, and 18.0 ppm.

6. A rabbit teratology study with a NOEL greater than 0.9 mg/kg/day for developmental toxicity. Levels tested were 0.1, 0.3, and 0.9 mg/kg.

7. An acute delayed neurotoxicity study in chickens, which was negative for neurotoxic effects under the conditions of the study (highest dose tesed was 8.0 mg/kg).

8. An Ames test was not mutagenic at the highest doses tested, 600 and 900 micrograms (ug)/plate, with or without metabolic activation, respectively.

9. An unscheduled DNA synthesis test in rat hepatocytes was not mutagenic at the highest dose tested, 45 nanoliter (nL)/milliliter (mL).

10. A chromosome aberration assay in Chinese hamster ovary cells was not mutagenic at the highest dose tested, 75 nL/mL with or without metabolic activation.

11. In an *in vitro* cell transformation test, it was concluded that cadusafos was capable of inducing morphological transformations of mouse embryo cells in the presence of metabolic activation at the highest three out of the four dose levels tested, which were 0.06, 0.07, 0.08, and 0.09 uL/mL. A positive finding in a mutagenicity test such as this one suggests that the test substance has the potential for inducing carcinogenic effects. Based on the negative findings of the 2-year rat and mouse carcinogenicity studies described above, the pesticide is not considered to be a carcinogen.

12. In a metabolism study with rats, 63 to 79 percent of the dose was excreted in the urine within 24 hours. The major urinary metabolites were methane sulfonic acid; o-ethyl S-(2-butyl)phosphorothioic acid; the threo and erythro stereoisomers of methyl 1-methyl-2-hydroxypropyl-sulfone; and S,S-di(2-butyl) phosphorodithioate.

The reference dose (RfD) based on the 1-year feeding study in dogs with a NOEL for ChE at 0.001 mg/kg/day and using an uncertainty factor of 100 is calculated to be 0.00001 mg/kg of body weight (bwt)/day. The theoretical maximum residue contribution (TMRC) resulting from this action will be 0.000002 mg/kg/bwt/day for the overall U.S. population and represents 23 percent of the RfD. The TMRC for the highest exposed subgroup, nonnursing infants less than 1 year old, is 0.000011 mg/kg/bwt/day, or 108.38 percent of the RfD, assuming that residue levels are at the established tolerances and that 100 percent of the crop is treated.

However, the Agency believes that actual residues to which the public is likely to be exposed are considerably less than indicated for the following reasons.

1. Not all the planted crop for which a tolerance is established is normally treated with the pesticide.

2. Most treated crops have residue levels which are below the established tolerance level at the time of consumption.

To take the second factor into account, the Agency recalculated the TMRC using the anticipated residues. The anticipated residue value of 0.005 ppm, the limit of detection of the analytical method for cadusafos, was used in the recalculation. This value was used considering the fact that most bananas are eaten or processed with the peel removed. Moreover, the available data showed no detectable residues in the pulp even for exaggerated application rates. Following this adjustment, the estimate of exposure from the proposed tolerance is 0.000001 mg/kg bwt/day, or 11.5 percent of the RfD for the overall population, and the estimate of exposure to nonursing infants less than 1-year old is 0.000005 mg/kg/ bwt/day, or 54.2 percent of the RfD.

The Agency requested usage data from FMC. That data submitted by FMC confirms that cadusafos is being applied on bananas in a manner that would not result in an increase in the anticipated residue level.

The nature of the residues in bananas is adequately understood, and an adequate analytical method, gas liquid chromatography using either a flame photometric detector or an alkali ionization detector, is available for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

Residue methodology data using the Food and Drug Administration pesticide multiresidue method protocol D have been provided.

Bananas are not considered to be a livestock feed item. Thus, there is no reasonable expectation of secondary residues in eggs, milk, and meat byproducts from the use of cadusafos on bananas.

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the establishment of the tolerance will protect the public health. Therefore, the tolerance is proposed as set forth below.

The proposed tolerance of .01 ppm agrees with the tolerance proposed by the Codex Alimentarius Commission for residues of cadusafos in or on bananas.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3447/P573]. All written comments filed in response to this document will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial

number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: April 22, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.461, to read as follows:

§ 180.461 Cadusafos; tolerances for residues.

A tolerance is established for residues of the nematicide/insecticide cadusafos, *O*-ethyl *S,S*-di-*sec*-butyl phosphorodithioate, in or on the following raw agricultural commodity:

Commodity	Parts per million
Bananas	0.01

There are no U.S. registrations as of May 10, 1994 for the nematicide/insecticide cadusafos.

[FR Doc. 94–11196 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 92–237, FCC 94–79]

Administration of the North American Numbering Plan

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In light of the response to the Commission's earlier Notice of Inquiry and subsequent developments, the Commission has adopted and released a Notice of Proposed Rulemaking concerning the future administration of the North American Numbering Plan and some narrower numbering issues. In its rulemaking notice, the Commission draws tentative conclusions, makes proposals, and seeks comment on these and related issues.

DATES: Comments must be filed on or before June 7, 1994, and reply comments must be filed on or before June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Peyton Wynns, Common Carrier Bureau, Industry Analysis Division (202–632–0745), or Allen A. Barna, Common Carrier Bureau, Tariff Division (202–632–6917).

SUPPLEMENTARY INFORMATION:

Background

This is a summary of the Commission's Notice of Proposed Rulemaking (Notice), adopted March 30, 1994, and released April 4, 1994, FCC 94–79, in the Common Carrier Docket No. 92–237 proceeding entitled, "Administration of the North American Numbering Plan" (the Plan). This Notice follows the Commission's earlier Notice of Inquiry (Inquiry). See Administration of the North American Numbering Plan, CC Docket No. 92–237, 7 FCC Rcd 6837 (1992), 57 FR 53462 (Nov. 10, 1992).

Before divestiture, the American Telephone and Telegraph Company (AT&T) developed and administered the Plan to coordinate the telephone numbers used in most of North America. As part of the 1984 divestiture of AT&T, administration of the Plan was transferred from AT&T to Bell Communications Research, Inc. (Bellcore). Following release of the Commission's Inquiry, Bellcore advised that it desired to relinquish administration of the Plan. In addition to the Commission's efforts, several industry groups are considering proposals to improve future administration of the Plan and to address specific numbering issues.

Phase One of this proceeding primarily focuses on who should administer the Plan and how such administration might be improved. Phase Two primarily focuses on the planned expansion of Feature Group D (FGD) Carrier Identification Codes (CICs). The Commission adopted the Notice to present its tentative conclusions and rulemaking proposals, and also to seek comment on these and related matters. This action was taken pursuant to sections 1, 4(i), 201–205, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 201–205, and 403.

Summary of Notice of Proposed Rulemaking

1. Phase One

In the first phase of the Notice, the Commission tentatively concluded that no federal government agency is ideally suited to administer the U.S. portion of the Plan but that the Commission could best assume those ministerial functions if they are to be performed by any such agency. Among existing non-government agencies, the Commission sought comment on whether the Alliance for Telecommunications Industry Solutions (ATIS) or some component of ATIS could handle Plan administration. Noting the possible advantages of a new, non-government entity to handle such administration, the Commission also sought comment on whether such a new entity should be established for this purpose. The Commission then tentatively concluded that ministerial administration of the Plan should be undertaken by a single, non-government entity established by the Commission and subject to its oversight, but also separate from the Commission and not closely identified with any particular industry segment. The Commission sought comment on these tentative conclusions and also on the appropriate parameters defining the mission, management, structure, functions, personnel, and capabilities of the new Plan administrator.

2. To finance future administration of the Plan, the Commission tentatively concluded that it has authority under the Communications Act to establish a set of Commission numbering fees or to create a new fund to finance future Plan administration. The Commission sought comment on these and other possible funding mechanisms. For example, if only a small amount is needed each year to finance administration of the Plan, the Commission seeks comment on whether it should impose a numbering surcharge on one of the funds currently administered by the National Exchange Carrier Association or use a portion of the annual surplus from one or more of these funds. The Commission tentatively concluded that it should impose fees to offset the costs of regulating U.S. numbering resources and sought comment on this and its other conclusions. The Commission also sought comment on whether a new numbering policy board should be established to assist regulators.

3. The Commission invited comment on the international implications of its various proposals to select, organize, and fund a replacement for the current Plan administrator. For example, in the event there are administrative costs of

the Plan which are not covered by Commission-imposed fees, the Commission proposed to establish with other World Zone 1 regulators a system of charges payable directly to the new Plan administrator by those who directly benefit from the operation of the Plan subject to appropriate oversight. The Commission also sought comment on the specific problems presented by the absence of uniform nationwide dialing arrangements and on the specific steps the Commission could take to remedy those problems.

4. *Phase Two.* In Phase Two, the Commission explained that Carrier Identification Codes (CICs) are numeric codes widely used within the telephone industry to provide local exchange access to long distance carriers, to route traffic, identify types of service, bill access purchasers, and for other purposes. In view of anticipated demand, the Commission indicated that the stock of three-digit Feature Group D (FGD) CICs available for assignment will likely be exhausted within a year or so. To increase the number of such codes, the Commission noted that a plan was developed by the industry to expand the format of these codes from three digits to four digits and also expand the format of carrier access codes (CACs) from five digits (10XXX) to seven digits (101XXXX). In light of various objections, the Commission's earlier inquiry sought comment on whether these planned changes should be reconsidered.

5. In the Notice, the Commission tentatively concluded that FGD CICs should be expanded to a four-digit format and sought comment on that tentative conclusion. However, to facilitate the changeover to the new codes, the Commission also proposed a transition period of six years during which subscribers could use both the current three-digit and the new four-digit CICs. In addition, the Commission sought comment on whether it should require local exchange carriers to cease screening and completing interstate, intraLATA "1+" Message Toll Service (MTS) calls and instead deliver those calls to the carrier preselected by the end user.

Initial Regulatory Flexibility Analysis

6. The Commission certified that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because, if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. While the rules proposed by the Commission would apply to telecommunications corporations of all sizes that are now assigned telephone numbers or that may in the future seek such assignments, the impact on small business entities served by these corporations and on small telecommunications companies is not likely to be significant. Similarly, the Commission's proposed rules on interstate, intraLATA toll traffic are not expected to have a significant impact on small telecommunications companies or other small business entities. The Commission Secretary was directed to send a copy of the Notice, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.* (1981).

Comments

7. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 7, 1994, and reply comments on or before June 30, 1994. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file an original and nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Ex Parte Analysis

8. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally, 47 CFR 1.1202, 1.1203, and 1.1206(a).

Ordering Clause

9. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), 201–205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, and 403, that *Notice is hereby given* of the proposed regulatory actions described above and *comment is sought* on these proposals.

List of Subjects in 47 CFR Part 1

Communications common carriers. Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–11168 Filed 5–9–94; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807 and 1815

Revision to NASA FAR Supplement Coverage on Procurement Plans, Instructions for Technical Proposal and Business Management Proposal Submissions, and Contents of the Prenegotiation Position Memorandum

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend the regulations pertaining to procurement plans, the instructions for technical and business management proposals, and the contents of the prenegotiation position memorandum in order to emphasize the importance of facilities in the contract planning and decision making process.

DATES: Comments must be received on or before July 11, 1994.

ADDRESSES: Submit comments to Mr. Joseph Le Cren, Contract Pricing and Finance Division (Code HC), Office of Procurement, NASA Headquarters, Washington, DC 20546. Comments on the paperwork burden should also be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for NASA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, (202) 358–0444.

SUPPLEMENTARY INFORMATION:

Background

Over the last several years, NASA's Office of the Inspector General has issued several reports critical of the agency and its contractors regarding facilities leasing practices. One report addressed the issue on an agency-wide basis. That report stated that NASA was paying several times over for the same facilities due to contractors entering into a series of short-term leases. The proposed rule emphasizes the importance of facilities by requiring installation procurement plans address facilities, specifying the information

needed from contractors in their business management plans for the agency to properly evaluate the proposed costs, and requiring that the prenegotiation memorandum discuss the factors considered in the evaluation of facilities. The proposed rule also revises the current coverage on procurement plans requiring Headquarters approval to better address the major facilities issues which should be considered.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The information collection requirements in this proposed rule have been submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h). The information will be used by NASA contracting personnel and technical personnel to evaluate and select proposals for contracts over $1,000,000. If this information is not collected, NASA will be less able to evaluate contract costs and ensure that those costs are fair and reasonable. The estimated annual paperwork burden of 300 hours in calculated by multiplying the estimated number of respondents (300) by the estimated hours (1 hour) for each respondent to prepare the information.

List of Subjects in 48 CFR Part 1807 and 1815

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1807 and 1815 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1807 and 1815 continues to read as follows:

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

PART 1807—ACQUISITION PLANNING

2. Section 1807.170–1 is amended by revising paragraph (b)(10)(i) to read as follows:

180.170–1 Procurement plans requiring approval by NASA Headquarters.

* * * * *

(b) * * *

(10) *Item 10. Contractor-owned or leased and Government-furnished property.* (i) If the proposed contract period of performance (exclusive of options) will be for a shorter period than the useful life, for the program, of any required contractor-owned or leased facilities (as defined in (FAR) 48 CFR 45.301), the facilities are unlikely to be needed by the contractor for any purpose other than the program effort being contracted for, and the facilities will represent a significant cost to the contract, then the procurement plan shall discuss the feasibility of the Government acquiring the right to use the facilities for longer than the proposed contract period, as well as the proposed procurement strategy for accomplishing this use.

(A) If program uncertainties for continuing beyond the contract period of performance (exclusive of options) are significant, it may be in the Government's best interests to acquire use of the facilities during only that time. This strategy may make the facilities more costly to the Government for the contract period than if a contractual arrangement for longer use were made. However, it should reduce the program risks associated with longer-term Government facilities obligations;

(B) If the program uncertainties for continuing beyond the contract period of performance (exclusive of options) are not significant, it may be in the Government's best interests to acquire the right to use the facilities for longer than the proposed contract period of performance (exclusive of options) in order to take advantage of economies in long-term facilities investment. In such cases, the following shall be considered:

(1) Whether the amount of the potential cost savings to the Government arising from the contractor entering into a long-term arrangement (lease, purchase or construction) continuing beyond the contract period of performance (exclusive of options) could be significant;

(2) If a long-term investment by the contractor could result in significant cost savings to the Government, the type of long-term arrangement that is believed would be most appropriate (e.g., long-term lease with the right of assignment to a third party or the Government, at the Government's option; purchase or construction of the facilities, with depreciation and cost of money either accelerated to cover the contract period of performance (exclusive of options) or over the useful life of the facilities); and

(3) Whether the contractor might require a financial guarantee be provided by the Government in order to enter into a long-term arrangement and, if so, what the potential amount of such a guarantee might be, should the contract end (e.g., options are not exercised, or the contractor is not selected in a recompetition).

* * * * *

3. Section 1807.170–2 is revised to read as follows:

1807.170–2 Procurement plans requiring approval at the installation level.

Procurement plans prepared for installation-level approval shall be prepared in accordance with 1807.170–1 or in the format prescribed by the installation. Installation prescribed formats shall ensure all contract management considerations enumerated at 1807.170–1(c) are addressed. In addition, installation prescribed formats shall ensure that plans for procurements in excess of $2,500,000 address the considerations at 1807.170–1(b)(10).

PART 1815—CONTRACTING BY NEGOTIATION

4. Section 1815.406–70 is amended by republishing paragraph (b) introductory text and paragraph (b)(5) introductory text and revising paragraph (b)(5)(iii) to read as follows:

1815.406–70 Instructions for technical proposal and business management proposal submission.

(a) * * *

(b) *Business management proposal.* Proposals should include the following:

* * * * *

(5) A statement as to—

* * * * *

(iii) The cost of any additional facilities (as defined at (FAR) 48 CFR 45.301) required to perform the work and how the costs are to be charged, with information as to whether the facilities will be contractor-furnished or Government-furnished and, if contractor-furnished, the alternatives considered (e.g., short-term lease, long-term lease with option to transfer the lease to a third party, purchase), including the long and short term benefits of each alternative, a description of any unique requirements or arrangements involved with each alternative, as well as the reasons for the alternative selected, a copy of the proposed lease or purchase agreement, identification of all costs included in the lease and ownership alternatives considered; and

* * * * *

5. Paragraph (c)(5) of section 1815.807–70 is revised to read as follows:

1815.807–70 Content of the prenegotiation position memorandum.

* * * * *

(c) * * *

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government). Although not all inclusive, the following are to be covered:

(i) The facilities needed by the contractor;

(ii) How the facilities are to be provided (Government or contractor);

(iii) If to be provided by the contractor, the alternatives considered (operating lease, capital lease, contractor purchase or construction, or other alternatives);

(iv) Whether a financial guarantee has been requested by the offeror;

(v) The reasons for the alternative selected; and

(vi) How the costs are to be charged.

* * * * *

[FR Doc. 94–11144 Filed 5–9–94; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC52

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Castilleja Levisecta (Golden Paintbrush)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the plant *Castilleja levisecta* (golden paintbrush) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). This species once occurred from Oregon north to Vancouver Island in British Columbia, Canada. Only 10 disjunct populations of this plant now exist, in open grasslands ranging from south of Olympia, Washington, in Thurston County, north through the Puget Trough to southwest British Columbia, Canada. One of these populations may be extirpated. Threats to the species include competition with encroaching native and alien plant species, habitat modification through succession in the absence of fire, predation, and the reduced ability of small, isolated populations to recover from stochastic (random) events. Direct human-caused threats include development of habitat, possible damage associated with road maintenance, and catastrophic fire. This proposal, if made final, would implement the Federal protection and recovery provisions of the Act for this plant.

DATES: Comments from all interested parties must be received by July 11, 1994. Public hearing requests must be received by June 24, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Boise Field Office, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705. Comments and materials received will be available by appointment for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Alison Beck Haas or Dr. Robert Parenti at the above address (208/334–1931).

SUPPLEMENTARY INFORMATION:

Background

Castilleja levisecta (golden paintbrush) was first collected near Mill Plain, Washington, by Thomas Jefferson Howell in 1880 and was described by Jesse More Greenman in 1898 (Greenman 1898). A perennial herb of the snapdragon family (Scrophulariaceae), *C. levisecta* typically has 5 to 15 erect to spreading unbranched stems, reaches a height of 0.5 meter (m) (20 inches (in)), and is covered with soft, sticky hairs. The lower leaves are entire and narrowly pointed; the upper leaves are broader, usually with one to three pairs of short lateral lobes on the distal end. The flower, mostly hidden by the overlapping bracts, has a calyx 15 to 18 millimeters (mm) (0.6 to 0.7 in) long and deeply cleft, and a corolla 20 to 23 mm (0.8 to 0.9 in) long, with a slender galea (concave upper lip) three to four times the length of the unpouched lower lip (Hitchcock and Cronquist 1978). It is distinguished from the other *Castilleja* species within its range by brilliant golden to yellow floral bracts. The plant flowers from April to June. When not flowering, the plant is inconspicuous. The species may be semi-parasitic like other members of the genus *Castilleja*, requiring a host plant for seedling development (Heckard 1962, Sheehan and Sprague 1984).

The plant tends to grow in clumps. One genet (genetic individual) may consist of 1 to 15 ramets (stems), making the calculation of exact numbers of individual plants difficult. Also, a wide variability of numbers of ramets per plant among genets and sites exists. Determining the number of ramets that comprise an individual plant generally requires destroying the plant (Reid Schuller, Natural Area Scientist, Washington Department of Natural Resources, pers. comm., 1992). In addition, variation in census methods exists. Therefore, estimates of population densities are difficult.

Western Oregon and Washington (and southern Vancouver Island) have a maritime climate, characterized by wet, mild winters and cool, relatively dry summers. Precipitation averages 800 to 1,350 mm (31 to 53 in) in the Puget-Willamette Trough (Sheehan and Sprague 1984).

The plant occurs in open grasslands at elevations below 100 m (328 feet (ft)) around the periphery of the Puget Trough. Most populations occur on glacially derived soils, either gravelly glacial outwash or clayey glacio-lacustrine sediments (Sheehan and Sprague 1984). Associated species include *Festuca idahoensis, Festuca rubra, Plantago lanceolata, Holcus lanatus, Achillea millefolium, Pteridium aquilinum,* and several species of *Vicia* and *Bromus* (Sheehan and Sprague 1984). Frequent, low intensity fires can be important in maintaining habitat for some plant species. Historically, periodic fires in the Puget Trough were instrumental in maintaining native grassland habitat by limiting successional encroachment of trees and shrubs (Sheehan and Sprague 1984).

Historically, *Castilleja levisecta* has been reported from over 30 sites in the Puget Trough of Washington and British Columbia, and as far south as the Willamette Valley of Oregon (Sheehan and Sprague 1984). In 1984, the Service conducted an assessment of the status of the species throughout its range. The plant was found to be extirpated from more than 20 historic sites (Sheehan and Sprague 1984). Many populations were found to be extirpated by conversion of habitat to agricultural, residential, and commercial development. In Oregon, *C. levisecta* historically occurred in the grasslands and prairie of the Willamette Valley; the species has been extirpated from all of these sites as the habitat has disappeared. The area around the type locality at Mill Plain, Washington, was converted to pasture and orchards some time after the plant was first collected there in 1880. Housing developments currently occupy the site (Sheehan and Sprague 1984).

Castilleja levisecta is now known from 10 extant populations. Seven occur in Washington: one just south of Olympia in Thurston County, five on Whidbey Island in Island County, and one on San Juan Island in San Juan County. In British Columbia, Canada, three populations exist: two populations on islands off the southern coast of

Vancouver Island and one in the city of Victoria, Vancouver Island.

The southernmost population of *Castilleja levisecta* occurs at the Rocky Prairie site south of Olympia, Washington, in Thurston County. The site is owned by the Washington Department of Natural Resources and is designated as a Natural Area Preserve that is managed primarily for protection of *C. levisecta* and *Aster curtus*, and preservation of the remnant native grassland community (R. Schuller, pers. comm., 1991). In 1983, the time of the last complete census, 15,000 plants were sporadically distributed throughout the 15-hectare (ha) (37-acre (ac)) site. A fire in 1985 eliminated the southernmost patch of *C. levisecta*, and the population was estimated to be about 7,000 plants in 1991 (R. Schuller, pers. comm., 1991). A population census at this burned area in 1993 revealed approximately 2,000 plants (Schuller, pers. comm., 1994).

Five populations are located on the north half of Whidbey Island, Island County, in Puget Sound. The largest of these occurs near Forbes Point on the west side of Crescent Harbor and is owned by the Department of Defense (Whidbey Island Naval Air Station). Navy personnel conducted a census of *Castilleja levisecta* in 1985 and counted more than 10,000 stems at the site (Clampitt 1985). The population was monitored in 1990, when it was estimated to be in the thousands, and again in 1991, when a reduction in density of about 25 percent was observed. The site was mapped and measures about 20 by 60 m (66 by 197 ft) (Matt Klope, Whidbey Island Naval Air Station, pers. comm., 1992).

A second population on Whidbey Island is located at Fort Casey State Park where approximately 120 plants occur on a 0.04 ha (0.10 ac) site (John Gamon, Botanist, Washington Natural Heritage Program, pers. comm., 1994). This State-owned historic site is managed as a park for recreational use (Ken Hagerman, Fort Casey State Park Manager, Washington Department of Parks, pers. comm., 1991).

A third Whidbey Island population of *Castilleja levisecta* occurs on the Bocker Environmental Preserve. This population occurs on two sites: one is 60 by 150 m (197 by 492 ft) on the Preserve, and a second is adjacent to the Preserve in a 4-square m (43-square ft) area. In 1993, 273 individuals existed (J. Gamon, pers. comm., 1994). The Preserve is owned by Seattle Pacific University and is used for environmental education courses (Keith Ludemann, Environmental Education Supervisor, Bocker Environmental Preserve, pers. comm., 1992).

A fourth Whidbey Island population occurs at Ebey's Landing, where 300 to 400 plants are found in a 10 by 30-m (33 by 98-ft) area (Sheehan and Sprague 1984). This site is privately owned.

The fifth Whidbey Island population of *Castilleja levisecta* is located at West Beach, at a site approximately 0.66 ha (1.6 ac) in size. The property is privately owned and is adjacent to a county road. In 1991 it supported 10 to 20 plants (M. Klope, pers. comm., 1991), down from about 200 in 1984 (Sheehan and Sprague 1984). In a letter to the Island County engineer, a citizen reported that roadside maintenance activities by the county had resulted in the elimination of the population (Steve Erickson, Whidbey Environmental Action Network, *in litt.*, 1991). Subsequent field inspection by Washington Natural Heritage Program staff confirmed that the population had been reduced to about five plants; however, the cause of the plant's decline at this site is unknown (Mark Sheehan, Washington Natural Heritage Program, *in litt.*, 1992).

The final U.S. population occurs on San Juan Island (San Juan County), and is located on a privately owned parcel near the Mar Vista Resort at False Bay. The site is approximately 4.3 by 3.0 m (14.1 by 9.8 ft) in size, and is comprised of 20 to 25 plants (Mark Sheehan, pers. comm., 1991; Sheehan and Sprague 1984).

Three extant populations of *Castilleja levisecta* occur near Victoria, British Columbia, Canada. One population is located on Alpha Islet, consisting of 200 to 300 plants, and is under the management of the Ministry of Parks. A second population, estimated at several thousand plants, in an area of about 2.3 ha (5.7 ac), is located on the Trial Islands and is currently managed by the Ministry of Parks as an Ecological Reserve. A third site consists of one clump (fewer than 10 plants) and was known to occur at Beacon Hill Municipal Park within the city of Victoria (Adolf Ceska, Curator of Botany, Royal British Columbia Museum, pers. comm., 1991). The current status of the Beacon Hill population is unknown.

Castilleja levisecta is threatened by habitat modification through succession of grassland to shrub and forest habitat, and low potential for expansion and refugia due to constriction of habitat. In addition, because the current distribution of the species has been greatly reduced from the historic distribution, the species is vulnerable to other threats such as collecting by recreational users, reduced vigor and reproductive potential due to predation, interspecific competition with native and exotic woody species, and a reduced ability to recover from catastrophic natural or human-caused events, such as catastrophic fire or accidental chemical spills from an adjacent highway and railroad. Two sites are vulnerable to potential residential or commercial development.

Previous Federal Action

Federal action on this species began when the Service published a notice of review for plants on December 15, 1980 (45 FR 82480). In this notice, *Castilleja levisecta* was included as a category 1 candidate. Category 1 candidates are those species for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Pending completion of updated status surveys, the status was changed to category 2 in the November 28, 1983, supplement to the Notice of Review (45 FR 53640). Category 2 candidates are those species for which information in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. *C. levisecta* remained a category 2 candidate in the September 27, 1985, Notice of Review for plants (50 FR 39526). In the February 21, 1990, Notice of Review (55 FR 6184), *C. levisecta* was elevated to category 1 status, based on additional data collected by the Washington Natural Heritage Program. The species remained in category 1 in the September 30, 1993, Notice of Review for plants.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Castilleja levisecta* Greenman (golden paintbrush) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Historic loss of prairie/grassland habitat in the Puget Trough has reduced the range of *Castilleja levisecta*, and habitat loss continues to be the primary

threat to remaining populations. Currently, encroachment by native and exotic woody species, as discussed in more detail under Factor E, is the primary cause of this habitat modification.

Development for residential or commercial use is a potential threat at two of the privately owned sites, West Beach and False Bay. The False Bay site is adjacent to a resort that may be sold in the near future, which ultimately may lead to expansion (M. Sheehan, pers. comm., 1991). The West Beach site is surrounded by residences and may be developed in the future. Although no plans for development have been initiated so far at these sites, the habitat for these two populations remains vulnerable to threats due to the adjacency to areas that receive high human use, and to the potential for development on these privately owned commercial and residential sites.

In recent history, fire suppression played a critical role in the reduction of grassland habitat in the Puget Trough and, therefore, in the reduction in numbers and sizes of *Castilleja levisecta* populations. A large, high intensity fire at any of the remaining sites where *C. levisecta* occurs could potentially eliminate populations, though the Service is unaware of permanent extirpations of this species due to fire. The ecology of the species should be studied further to determine the relationship between its habitat needs and fire, the effects of fire on reproductive viability, and the subsequent success of recruitment from outside burned areas.

The Washington Department of Natural Resources is conducting some experimental burning, and the Navy has also expressed interest in conducting burns (R. Schuller, M. Klope, pers. comm., 1991). Fire is a potential tool for maintaining and expanding habitat, however, because *Castilleja levisecta* has been reduced to 10 disjunct populations, and the potential for recruitment from other populations is low. The use of fire must be carefully considered to avoid the potential for extirpations. Interspecific competition and the role of fire in maintaining *C. levisecta* habitat are overlapping factors (see Factor E).

Loss of suitable habitat from either encroachment of woody species or development in the areas surrounding the disjunct populations prevents expansion of the species and affords no refugia in the case of catastrophic events that affect existing populations. Because the grassland habitat in the areas surrounding the existing populations has been lost, it is doubtful that the populations would expand naturally. Thus, the continued existence of *Castilleja levisecta* is threatened by the absence of available habitat for recruitment and colonization.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Castilleja levisecta has no known commercial use. Because of its showy golden-yellow bracts, recreational users may pick flowers at public sites. Fort Casey State Park, Bocker Environmental Preserve, Forbes Point, and Beacon Hill Municipal Park are sites of high levels of public use; collection and trampling are potential threats at these sites (see Factor E). For example, Fort Casey State Park receives a high amount of recreational use, and the potential for overcollection is considered a genuine threat. Visitor use has increased within the last decade, and park users have been observed picking the flowering plant at Fort Casey State Park (K. Hagerman, pers. comm., 1991). Once numbering over 500 plants (Hagerman, pers. comm., 1991), the Fort Casey State Park population had significantly declined to approximately 120 individuals by 1993 (J. Gamon, pers. comm., 1994). Some taxa have become vulnerable to collection by curiosity seekers as a result of increased publicity following publication of a listing proposal.

C. Disease or Predation

Disease is not known to be a factor threatening *Castilleja levisecta*. Populations may have been reduced from historical levels by grazing by livestock and browsing by rabbits (Sheehan and Sprague 1984). Browsing of the tops of *C. levisecta* plants, probably by rabbits and/or deer, has been observed at the Bocker Environmental Preserve. The effect of that browsing is unknown, although presumably it could affect seed number and reproductive viability (K. Ludemann, pers. comm., 1991). Grazing by livestock and exotic feral rabbits also threatens the False Bay population (Sheehan and Sprague 1984). In 1990 and 1991 at the Forbes Point site, Klope (pers. comm., 1991) observed heavy predation on herbaceous material and seeds by rodents. Signs of predation also were noted there in 1984 and 1985 (Clampitt 1985), which may be reducing the reproductive potential at that site.

The Rocky Prairie Natural Area Preserve population of *Castilleja levisecta* has historically harbored a population of the Whulge checkerspot butterfly (*Euphydryas editha taylori*), a state sensitive species, which is a potential seed predator. Because *C. levisecta* is not a specific host and no individual butterflies were observed at the site in 1991, the threat is probably low at this time (Mark Sheehan, pers. comm., 1991). Though several species of caterpillar were known to prey on *C. levisecta* (Sheehan and Sprague 1984, Evans *et al.* 1984), they do not currently pose a threat (R. Schuller, pers. comm., 1991).

Predation by native species is one of the natural pressures historically faced by *Castilleja levisecta*, but populations that have been reduced due to other factors are very vulnerable to decline and are less able to rebound after periods of heavy predation.

D. The Inadequacy of Existing Regulatory Mechanisms

No legal mechanism for the protection of *Castilleja levisecta* or its habitat exists. The species is listed as endangered by the Washington Natural Heritage Program (Washington Natural Heritage Program 1990), and as a category R4 species (restricted distribution, large population) by the province of British Columbia (A. Ceska, pers. comm., 1991). Four sites are included among the Natural Heritage Program's Registry of Natural Areas (L. Smith, pers. comm., 1991). The Rocky Prairie site was acquired by the Washington Department of Natural Resources for the purpose of protection of *C. levisecta* and *Aster curtus*, a Federal category 2 candidate (R. Schuller, pers. comm., 1991). All of these designations are important because they recognize the sensitive status of the species and encourage land managers and agencies to consider the species in management plans; however, they provide no protection under the law. Therefore, changing land management priorities or inadequate funding for protection could leave the species vulnerable at many of the sites.

Except for the Rocky Prairie Natural Area Preserve population, all publicly owned *Castilleja levisecta* populations are managed for purposes other than plant preservation. Thus, when conflicts between those purposes and management of the species arise, the primary function likely will take priority.

The Rocky Prairie Natural Area Preserve population has the highest level of protection of the 10 sites. Existing on State-owned property actively managed for plant conservation, this is the only site with known efforts to eliminate non-native species, including prescribed burning and hand removal of invasive plants. Efforts by the Washington Department of Natural

Resources to eliminate the invasive *Cytisus scoparius* at this site are voluntary, and not based in governmental statutory requirements; hence, State regulatory protection is not ensured. The long-term viability of the population continues to face threats from invasion of woody species and potentially catastrophic events, such as accidental spills from the nearby highway and railroad or large, high intensity fires.

The Fort Casey population is also on publicly -owned land, the Fort Casey State Park. Although present managers are employing limited protective measures, the plant is vulnerable to picking (see Factor B) and stochastic events due to the population's small size.

The Forbes Point population occurs on Federal land, on Whidbey Island Naval Air Station. The Department of Defense is currently participating in the Washington Registry of Natural Areas Program. A Navy staff biologist has undertaken measures to evaluate the population's status. Efforts have also been made to eradicate some invasive alien species. However, funding for more aggressive means of protecting the plant, such as fencing to preclude rodent predation and human trampling, has not been available. Signs have been erected designating the site as a research area, but there is no enforcement against public use of this site, which receives considerable foot traffic associated with a popular beach area nearby (M. Klope, pers. comm., 1991).

The populations of *Castilleja levisecta* at Ebey's Landing and the Bocker Environmental Preserve are also listed on the Washington Registry of Natural Areas. Ebey's Landing is on private property surrounded by the Ebey's Island Historic Reserve. The Bocker Environmental Preserve, owned by Seattle Pacific University, is currently managed as a natural area used for education purposes, and no active management to retain grassland habitat exists. Although *C. levisecta* is considered in the current management of the Historic Reserve, the area is not managed specifically for the plant, and the population is threatened by predation and invasion of woody species. The West Beach and False Bay populations of the species are on private property and receive no legal protection.

The *Castilleja levisecta* populations in Canada also receive no regulatory protection. Legislation to protect endangered species has been proposed to the British Columbia government, but currently no Federal or Provincial law protects sensitive species. Trial Islands, offshore from the city of Victoria, is designated as an Ecological Reserve by the British Columbia Ministry of Parks. The small population at Alpha Islet also is located within a designated Ecological Reserve. However, this designation does not require specific management recommendations for the plant. Because this designation is an administrative one, it could potentially be reversed by administrative decision, and the site could be used for other purposes (M. Sheehan, pers. comm., 1990).

The third Canada population of *Castilleja levisecta*, at Beacon Hill Municipal Park, is unprotected. The population consists of fewer than 10 plants and occurs in a portion of the park that receives heavy recreational use (A. Ceska, pers. comm., 1991).

In summary, no comprehensive management plan exists for *Castilleja levisecta*, and protection and recovery efforts have not been coordinated among population sites. Therefore, regulatory mechanisms are not adequate to ensure the continued existence of this species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Grassland habitat has historically been maintained by periodic fires that prevented encroachment of woody plant species (Sheehan and Sprague 1984). Fire suppression in recent years has led to invasion of grasslands by native species such as *Pseudotsuga menziesii*, *Rosa* sp., and *Berberis aquifolim*. Encroachment by non-native species such as *Cytisus scoparius* and *Hiracium pilosella* also occurs. These species are naturally invasive and tend to become the dominant species in areas where they occur, competing with *Castilleja levisecta* for space and nutrients.

Interspecific competition is a serious threat to the continued existence of *Castilleja levisecta*. Loss of grassland habitat due to invasion of woody species threatens the plant at the Rocky Prairie Natural Area Preserve (R. Schuller, pers. comm., 1991), Bocker Environmental Preserve (K. Ludemann, pers. comm., 1991), Ebey's Landing (Jim Larson, Chief, Division of Natural Resources, National Park Service, pers. comm., 1991), West Beach (Laura Smith, Associate State Director, The Nature Conservancy, pers. comm., 1991), and Forbes Point (M. Klope, pers. comm., 1991) sites. *C. levisecta* cannot survive under a closed canopy, and species such as *Pseudotsuga menziesii*, *Rosa* sp., *Berberis aquifolim*, and the non-native *Cytisus scoparius* overtop *Castilleja levisecta*. Those species may also outcompete *C. levisecta* for root space and nutrients (Sheehan and Sprague 1984). The species appears to be unable to compete successfully against species that tend toward monoculture (J. Gamon, pers. comm., 1990).

Control of invasive species and the prevention of conversion of habitat is difficult. Some efforts have been made to remove interspecific competitors mechanically or by hand at the population sites of *Castilleja levisecta*. However, the practice is expensive, labor intensive, and dependent upon volunteer workers and discretionary efforts by land managers (Sheehan and Sprague 1984; R. Schuller, K. Hagerman, and M. Klope, pers. comm., 1991). At the Rocky Prairie Natural Area Preserve site, volunteers associated with The Nature Conservancy and the Washington Department of Natural Resources have made efforts to control *Cytisus scoparius*, but it still remains a threat.

The *Castilleja levisecta* habitat at four of the Whidbey Island population sites (Fort Casey State Park, Forbes Point, Bocker Environmental Preserve, and West Beach) are also threatened with the succession of tree and shrub communities. If left unchecked, encroachment of *Rosa* sp. will soon eliminate the population at the West Beach site (L. Smith, pers. comm., 1991). Clampitt (1985) noted the encroachment of several other aggressive plants, specifically *Rubus* sp. (blackberry), *Vicia* sp. (vetch) and *Trifolium* sp. (clover) onto *C. levisecta* habitat at Forbes Point. Invasive shrubs are succeeding in competition with *C. levisecta* at the Bocker Environmental Preserve site. Numbering over 1,200 individuals in 1984, by 1993 the population had declined significantly to 273 individuals (J. Gamon, pers. comm., 1994).

In 1985, approximately 10 percent of the *Castilleja levisecta* population at the Rocky Prairie Natural Area Preserve site was burned when a prairie fire was started by sparks from an adjacent railroad line. Abundance of *C. levisecta* at the burned site was initially reduced by about 85 percent within the burned area. Monitoring in subsequent years has shown a slow recovery of numbers; in 1991 the population was up to about 50 percent of its pre-fire density. Experimental burning has since been used at that site to study the effects of fire on *C. levisecta*, which is ongoing with no conclusive results as yet (R. Schuller, pers. comm., 1991). While fire may temporarily reduce the abundance of *C. levisecta*, it may also promote the plant over time by maintaining open prairie habitat that would otherwise become shrub and forest lands through natural succession.

Trampling by recreationists threatens the plant at several locations. The few plants that occur at the Beacon Hill Municipal Park site in Victoria are located in a heavily used area of the park. A cross country ski event in 1991 apparently damaged the existing clump of plants (A. Ceska, pers. comm., 1991). The Forbes Point site on Whidbey Island is accessible to the public; clam diggers have been observed walking through the *Castilleja levisecta* site (M. Klope, pers. comm., 1991).

The isolation and small sizes of *Castilleja levisecta* populations make the species vulnerable to extirpation from stochastic (i.e., random) events. Because of the disjunct distribution of the plant, recolonization of a population following a catastrophic elimination is unlikely. Genetic variability is also reduced in small, isolated populations, and the chances of adapting to environmental change is less likely.

Adjacent land use activities also threaten the species' survival. Conversion of surrounding habitat to later successional stages and conversion to development eliminate refugia, and limit the ability of *Castilleja levisecta* to recolonize areas beyond the existing sites. Threats from a railroad line, a highway, and a residential area bordering the Rocky Prairie site include catastrophic fire and chemical spills. Digging by domestic dogs from nearby subdivisions has destroyed habitat within the enclosure at Rocky Prairie (R. Schuller, pers. comm., 1991). Road maintenance adjacent to the West Beach site may have destroyed that population (S. Erickson, *in litt.*, 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Castilleja levisecta* as threatened. Threats to *C. levisecta* include habitat destruction and modification through succession of prairie and grassland habitats to shrub and forest lands; development of property for industrial, residential and agricultural use; low potential for expansion and refugia due to constriction of habitat; recreational picking; predation; absence of legal mandates for protection of the plant or its habitat; interspecific competition with native and exotic woody species; and stochastic events due to the small size of the populations and limited number of individuals.

Because many of the sites are designated as preserves or afforded some level of protection through current management efforts, the species is not currently in danger of extinction. However, because the species' distribution is much reduced from historic records, and the current sites face threats from the factors listed above, *Castilleja levisecta* is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The species therefore fits the definition of threatened as defined by the Act. Critical habitat is not being proposed for this species for reasons discussed in the Critical Habitat section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. Such a determination would result in no known benefit to *Castilleja levisecta*. As discussed above under Factor B in the Summary of Factors Affecting the Species, *C. levisecta* is vulnerable to taking. Publication of precise maps and critical habitat descriptions in the **Federal Register** would be likely to increase the degree of threats from taking and vandalism, and would increase enforcement problems. All involved parties and landowners have been notified of the importance of the species' habitat. Protection of its habitat will be addressed through the recovery and section 7 consultation processes. Therefore, the Service finds that designation of critical habitat for *C. levisecta* is not prudent at this time, because a designation would increase the degree of threat from vandalism, collecting, and other human activities, and because it is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. Recovery efforts encourage communication and cooperative efforts among various land managers and owners. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. That would encourage protection and recovery efforts at Rocky Prairie Natural Area Preserve and Fort Casey State Park, sites owned by the State of Washington. The protection required by Federal agencies and prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The population of *Castilleja levisecta* at Forbes Point occurs on Federal land at Whidbey Island Naval Air Station. Any Federal actions there would be subject to section 7 requirements.

The Act and implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. With respect to *Castilleja levisecta*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered or threatened plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale this species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered or threatened plant on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their

containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities and their possible impacts on this species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal. The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and sent to the Field Supervisor, Boise Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Washington Natural Heritage Program. 1990. Endangered, threatened and sensitive vascular plants of Washington. Department of Natural Resources, Olympia. Second printing. 52pp.

Authors

The primary author of this proposed rule is Alison Beck Haas, Boise Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 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.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the family Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Scrophulariaceae—Snapdragon family:						
*	*	*	*	*	*	*
Castilleja levisecta	Golden paintbrush	U.S.A. (WA, OR), Canada (B.C.).	T		NA	NA
*	*	*	*	*	*	*

Dated: April 25, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–11257 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

RIN 1018–AC50

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Insects From the Santa Cruz Mountains of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Mount Hermon June beetle (*Polyphylla barbata*) Zayante band-winged grasshopper (*Trimerotropis infantilis*), and Santa Cruz rain beetle (*Pleocoma conjugens conjugens*). These three insects are located in Santa Cruz County, California, and are threatened by urban development, recreational use, sand mining, agricultural activities, and alteration of natural fire frequency. This proposal, if made final, would implement the Federal protection and recovery provisions of the Act for these three species.

DATES: Comments from all interested parties must be received by July 11, 1994. Public hearing requests must be received by June 24, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Hohman at the above address (telephone 805/644–1766).

SUPPLEMENTARY INFORMATION:

Background

The Mount Hermon June beetle (*Polyphylla barbata*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), and Santa Cruz rain beetle (*Pleocoma conjugens conjugens*) are endemic to restricted sandstone deposits in the Santa Cruz Mountains, Santa Cruz County, California. The Santa Cruz Mountains are a relatively young range composed of igneous and metamorphic rocks overlain by thick layers of sedimentary material uplifted from the ocean floor and ancient shoreline zone (Caughman and Ginsberg 1987). These Miocene marine terraces, referred to as the Santa Margarita formation (Marangio and Morgan 1986), persist as pockets of sandstones and limestones that are geologically distinct from the volcanic origins of the mountain range. Soils that formed from these sandstone deposits occur in scattered pockets covering about 3,240 hectares (ha) (8,000 acres (ac)) (Marangio and Morgan 1986), and are referred to as the Zayante series (USDA Soil Conservation Service 1980). Pockets of Zayante soils are deep, coarse-textured and poorly developed, and occur in three clusters in the Santa Cruz Mountains. The largest cluster is in the vicinity of the communities of Ben Lomond, Felton, Mount Hermon, and Olympia, and the city of Scotts Valley. A second cluster is in the Bonnie Doon area, and the third, which is the smallest, is in the vicinity of the community of Corralitos (Marangio 1985).

Predominant vegetation of the Santa Cruz Mountains consists of redwood forest (Zinke 1988) and mixed evergreen forest (Sawyer *et al.* 1988). Within the Santa Cruz Mountains, however, two unique communities are restricted to the Zayante soil series: maritime coast range ponderosa pine forest and northern maritime chaparral (Griffin 1964, Holland 1986). Maritime coast ponderosa pine forests are open park-like areas that usually contain ponderosa pine (*Pinus ponderosa*), knobcone pine (*P. attenuata*), coast live oak (*Quercus agrifolia*), and, at a few sites, the federally endangered Santa Cruz cypress (*Cupressus abramsiana*) (Griffin 1964, Holland 1986, Morgan 1983). Northern maritime chaparral, locally referred to as "silver-leaf manzanita mixed chaparral" (Marangio 1985, Marangio and Morgan 1986), is dominated by the endemic silver-leaved manzanita (*Arctostaphylos silvicola*), a candidate for Federal listing.

Both the knobcone pine and Santa Cruz cypress are dependent on naturally occurring fires at appropriate frequencies for regeneration. The association of these fire dependent species with maritime coast ponderosa pine forests indicates that fire frequency plays a role in the survival of this vegetation community. The ponderosa pines and associated trees occur in scattered to dense stands with an understory of small herbaceous plants and grasses and frequently little shrub understory. Maritime coast ponderosa pine forest may include areas lacking ponderosa pine. Local botanists refer to maritime coast ponderosa pine forest in this area as "ponderosa pine sand parkland" (Marangio 1985, Morgan 1983) or "ponderosa pine sandhill" (California Native Plant Society 1986). Because of their disjunct distribution, ponderosa pine sand parklands have been called "biological islands" (Marangio 1985).

The Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle have very restricted ranges within the Santa Cruz Mountains. With the exception of two sightings, all known localities for the three taxa are within a 52 square kilometer (20 square mile) range on ponderosa pine sand parklands.

The Mount Hermon June beetle was first described by Cazier (1938) from Mount Hermon, Santa Cruz County, California. It is 1 of 28 species of *Polyphylla* in America north of Mexico and 1 of 15 species of the *diffracta* complex within the genus *Polyphylla* (Young 1988). Young (1988) recently made several nomenclatural adjustments of the genus *Polyphylla* but retained *P. barbata*. Two other species of *Polyphylla* occur in the Ben Lomond-Mt. Hermon area, *P. crinita* and *P. nigra*. *P. crinita* occurs from British Columbia, Idaho, and Montana south to California and Nevada. *P. nigra* occurs from British Columbia south to Baja California, Mexico. The Mount Hermon June beetle is distinguished from other species of *Polyphylla* by the presence of relatively dense, long, erect hairs scattered randomly over the elytra (thick leathery front wings) and short erect hairs on the pygidium (abdominal segment) (Young 1988).

The adult male Mount Hermon June beetle is a cryptic small scarab beetle with a black head, dark blackish-brown elytra clothed with scattered long brown hair, and a striped body (Borror *et al.* 1976, Young 1988). Elytral vittae are broken, often reduced to discontinuous clumps of scales but still form identifiable lines (Young 1988). Females are larger, with a black head, chestnut color clypeus (plate on lower part of face) and elytra, and golden hairs on head, thorax, and legs (Young 1988). The one adult female described was 22 × 11 millimeters (mm) (0.87 × 0.43 inches (in)) while the holotype male was 20 × 9.7 mm (0.79 × 0.38 in) (Young 1988).

The Mount Hermon June beetle requires about 2 to 3 years to mature from hatching through the adult form. Most of the life cycle is spent in the larval form. The larvae are subterranean and feed on the roots of certain grasses (Dr. Art Evans, Los Angeles County Museum of Natural History, pers.

comm., 1993). Adults may feed on leaves (Dr. Fred Andrews, California Department of Food and Agriculture, pers. comm., 1993). Adult males are strong fliers and females are fossorial; they may be reluctant to fly because of their large body size (A. Evans, pers. comm., 1993; Dr. Alan Hardy, California Department of Food and Agriculture, pers. comm., 1993). For 1 to 2 months in spring and early summer, the adults emerge at dusk for mating and the males fly in search of females. This limited time period for mating suggests that a specific mechanism to ensure reproductive success is employed such as emission of pheromones by females to attract males (Lilly and Shorthouse 1971 *in* Young 1988). Within a short time after mating and egg-laying, the adults die.

The Mount Hermon June beetle is found on ponderosa pine sand parklands in the immediate vicinity of the communities of Mount Hermon, Glen Arbor, Olympia, and Ben Lomond in Santa Cruz County, California (Young 1988). A lone beetle specimen collected in 1968 is labeled as occurring in Santa Cruz. This specimen may have been a waif, since these beetles are strong fliers, or the location on the label was inaccurate (Stephen McCabe, California Native Plant Society, *in litt.*, 1991). Recent collections of Mount Hermon June beetles (1990) are from ponderosa pine sand parklands between the communities of Ben Lomond and Mount Hermon (S. McCabe, *in litt.*, 1991).

The limited range of the Mount Hermon June beetle is probably due to various factors including substrate preferences, food sources, and the apparent restricted home range of the females. Beetles of this genus prefer sand/grass or sand/grass and coniferous forest (substrate/plant) associations such as those found in ponderosa pine sand parkland (Borror *et al.* 1976; Young 1988; A. Hardy, pers. comm., 1993). The Mount Hermon June beetle seems to prefer grasses and conifers (A. Evans, pers. comm., 1993) associated with ponderosa pine sand parkland (Marangio and Morgan 1986).

The Zayante band-winged grasshopper (*Trimerotropis infantilis*) was first described from a ponderosa pine sand parkland area of the Santa Cruz Mountains, Santa Cruz County, California (Rentz and Weissman 1984). It is 1 of 54 species in the genus *Trimerotropis* (Rentz and Weissman 1984). This species is similar in appearance to *T. occulans*, which is restricted to San Luis Obispo and Santa Barbara Counties (Otte 1984), and *T. koebelei*, which is larger in size and has a wider frontal costa (wing vein), lower pronotal crest (dorsal body wall plate of the prothorax), and more distinct pronotal carinae (keel).

The Zayante band-winged grasshopper is one of the smallest species in the genus. The body and forewings are pale gray to light-brown with dark crossbands on the forewings. The basal area of the hindwings is pale yellow with a faint thin band (Otte 1984, Rentz and Weissman 1984). The hind tibiae are blue-gray and the eye is banded. The pronotum possesses lateral carinae represented as tubercles. Individual flights are between 1 to 2 meters (m) (3 to 7 feet (ft)), and the grasshoppers stridulate while flying, producing a buzzing sound (Rentz and Weissman 1984). Band-winged grasshoppers often alight on bare ground and are conspicuous in flight because of the color of the hind wings and the crackling sound made by the wings (Borror *et al.* 1976).

Locality records and recent collections indicate the distribution of the Zayante band-winged grasshopper is restricted to ponderosa pine sand parklands in the Santa Cruz Mountains, specifically in the vicinity of the community of Felton (Rentz and Weissman 1988; R. Morgan, private consultant, Soquel, California, *in litt.*, 1992). Efforts to collect Zayante band-winged grasshoppers from numerous localities in central Santa Cruz County and various habitats including grassland and chaparral have been unsuccessful except at ponderosa pine sand parklands (R. Morgan, *in litt.*, 1992). The Zayante band-winged grasshopper often occurs in association with the Ben Lomond wallflower (*Erysimum teretifolium*) (R. Morgan, *in litt.*, 1992), a federally endangered species that is also restricted to ponderosa pine sand parklands.

Horn (1888a, 1888b *in* Horvore 1977) described a new species of rain beetle from near the city of Santa Cruz as *Pleocoma conjugens*. Subsequently, Horvore's (1977) analysis of rain beetles identified two allopatric subspecies, one restricted to the Santa Cruz Mountains (*Pleocoma conjugens conjugens*) and the second restricted to the Santa Lucia Mountains (Pleocoma conjugens lucia) in Monterey County. These subspecies differ in morphological characteristics and food preferences of larvae. The Santa Cruz rain beetle is the only species of rain beetle known to occur in the Santa Cruz Mountains. The closest known population of any other species of rain beetles is located in the western Santa Clara Valley and is within a complex of populations assigned to *Pleocoma behrensi* (Frank Horvore, Placerita Canyon Nature Center, *in litt.*, 1993).

Adult male Santa Cruz rain beetles are generally stout-bodied, convex from above, relatively large when compared to other rain beetles (about 25 mm (1 in) in length), unicolorous, shining reddish-brown to blackish in color, and the ventral surface of the body is clothed with long hair (Horvore 1979). The head is specifically modified for digging. The elytra are not truncate at the apex and cover the entire abdomen. Front tibiae are dilated, flattened, and coarsely scalloped or toothed along the outer edge (Borror *et al.* 1976, Horvore 1977). Segment 3 of the antenna is elongate and strongly angulated anteriorly at apical 1/3. In the female, segment 6 of the antenna has lamellae distinctly shorter than segment 7; segment 9 is longest (Horvore 1977). Females are small (27 to 32 mm (1 to 1.3 in) in length) when compared to other species of rain beetles, with the pronotal surface (dorsal body plate of the thorax) shining and moderately densely punctate. Antennal segment 3 is short and subcylindrical; segment 9 is longest. They lack functional wings and are usually fatter than males (Horvore 1979). Adults lack working mouthparts and cannot feed (Horvore 1979).

Both male and female Santa Cruz rain beetles in the Mount Hermon area have been found in dry sandy soils in open areas (F. Horvore, pers. comm., 1993). Hazeltine (1950) located larvae in an area of grass and ponderosa pine, which is a description of ponderosa pine sand parkland. Larvae and adults are subterranean except when adult males emerge to fly in search of females. Eggs are laid in the female's burrow in spring or summer following mating in the fall or winter. Burrows may be up to 1 m (3 ft) deep. Egg development takes about 2 months. The larvae live in the soil and feed on the roots of plants (Borror *et al.* 1976). Probable host plants are *Pinus ponderosa*, *Gnaphalium* sp., and *Quercus agrifolia* (Hazeltine 1950). Larval lifespan extends for several years, 13 years for some *Pleocoma* species. Following transformation through the pupal stage to the adult stage and the onset of winter rains, the adult rain beetles emerge from underground burrows at dawn or dusk to mate (Borror *et al.* 1976, Horvore 1979). Females excavate a tunnel to the surface, release a pheromone, return to the tunnel, and await the arrival of a male (Dr. James Chemsak, University of California, Berkeley, pers. comm., 1993). That is the only time a female is above ground. Males locate females by flying and tracking pheromones emitted by the females (James Robertson, Los Angeles

County Museum of Natural History, pers. comm., 1993). Populations are often restricted to a few acres of habitat (Horvore 1979). The size and distribution of a population is limited to the area that flightless females can tunnel through to lay eggs and that larvae can excavate while feeding on roots.

Locality records indicate the Santa Clara rain beetle is limited to the Santa Cruz Mountains in the area of the communities of Ben Lomond, Felton, Mount Hermon, Scotts Valley, Redwood Glen, and Waddell Creek (Hazeltine 1950, Horvore 1977, F. Horvore *in litt.* 1993). All locations, except Waddell Creek, are within ponderosa pine sand parkland. The male rain beetle's ability for strong and sustained flight and its attraction to reflections of light from water may explain the locality record from Waddell Creek.

Historic and recent collection records indicate that the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Clara rain beetle are restricted to ponderosa pine sand parkland habitat. More than 50 percent of this habitat has been lost or altered from human development (e.g., housing development, agriculture, mining, recreation) and alteration of fire frequency. By 1986, approximately 100 ha (250 ac) of ponderosa pine sand parklands scattered over about 20 sites remained undeveloped (Marangio and Morgan 1986). By 1992, less than 40 ha (100 ac) was estimated to remain (R. Morgan, pers. comm., 1992).

Approximately 40 percent of the remaining known and potential ponderosa pine sand parkland habitat for the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle is privately owned. Public land within existing and potential habitat includes Quail Hollow Ranch, owned by the County of Santa Cruz; a preserve adjacent to Quail Hollow Ranch and Bonny Doon Ecological Preserve, owned by the California Department of Fish and Game (Department); and Henry Cowell Redwoods State Park.

Previous Federal Action

The Service included the Mount Hermon June beetle as a category 2 candidate species in the January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804), Animal Notices of Review. Category 2 species are those for which information in the Service's possession indicates that listing is possibly appropriate, but for which substantive data on biological vulnerability and threats are not currently available to support proposed rules. On February 11, 1991, the Service was petitioned by Mr. Stephen McCabe, California Native Plant Society, to emergency list the Mount Hermon June beetle as an endangered species.

The Service made a 90-day finding on June 10, 1991, that substantial information had been presented indicating that the petitioned action may be warranted, and announced this decision in the August 19, 1992, **Federal Register** (57 FR 37513). The Service initiated a status review of the Mount Hermon June beetle at that time.

The Service was petitioned on July 16, 1992, by Dr. David Weissman, California Academy of Sciences, to list the Zayante band-winged grasshopper as an endangered species. This proposed rule constitutes the final finding for the petitioned actions for the Mount Hermon June beetle and Zayante band-winged grasshopper, in accordance with section 4(b)(3)(B)(ii) of the Act.

The Service learned of the status of and threats to the Santa Cruz rain beetle during its status reviews of the Mount Hermon June beetle and Zayante band-winged grasshopper. During the status reviews of the three taxa, the Service examined the available data on life history, ecology, locality records, and species' range. Sources of status and threat information for the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle include reports and plans supplied by proponents and reviewing agencies for development projects within the range of these three species, and published and unpublished data from scientists with expertise on these taxa and their habitat needs. Following completion of the status reviews, the Service determined that enough information exists to propose the species for listing.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mount Hermon June beetle (*Polyphylla barbata*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), and Santa Cruz rain beetle (*Pleocoma conjugens conjugens*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle inhabit restricted pockets of ponderosa pine sand parklands in the Santa Cruz Mountains. The imminent threat facing these species and their associated habitat is the ongoing and threatened destruction and adverse modification of habitat by one or more of the following activities: urban development, agriculture, sand mining, recreational use, and alteration of fire frequency (see Factor E below).

Historically there were approximately 200 ha (500 ac) of ponderosa pine sand parklands. By 1986, only about 100 ha (250 ac) of ponderosa pine sand parklands scattered over about 20 sites remained (Marangio and Morgan 1986). By 1992, estimates of remaining ponderosa pine sand parklands totalled less than 40 ha (100 ac) (R. Morgan, pers. comm., 1992).

Urban development has resulted in alteration and loss of habitat for the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle. Construction of private homes, roads, and businesses has removed vegetation and modified soils through compaction and disruption of the soil's horizon. More than 480 ha (1,200 ac) of sandhills vegetation has been lost to residential development. One site where the Zayante band-winged grasshopper previously had been collected has since been converted to a parking lot (D. Weissman, pers. comm., 1992). Existing Santa Cruz County and Scotts Valley plans, zoning designations, and approved permits indicate that development will continue in this area and further fragment and reduce the habitat for these taxa (Marangio 1985).

Historically, portions of sandhills vegetation were cleared for agriculture, but they were unproductive, prone to erosion, and of little agricultural value (Griffin 1964, Storie *et al.* 1944 as cited in Griffin 1964). Although ponderosa pine sand parklands are not heavily used for agricultural purposes, past clearing for cattle grazing has contributed to their fragmentation and decline.

Sand deposits have been actively mined for construction purposes within the ponderosa pine sand parklands for at least five decades (Storie *et al.* 1944 *in* Griffin 1964). Much of the remaining habitat of the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle is threatened by sand mining. The type locality for the Zayante band-winged grasshopper has been mined and is currently an unvegetated deep pit (R.

Morgan, *in litt.*, 1992). Four large quarries with mining permits exist in the vicinity of known occurrences of the three insect species. Three of these mines are currently active: Quail Hollow Quarry, with current plans for expansion (John Gilchrist and Associates 1990); Olympia Quarry, also with plans for expansion; and Kaiser-Felton Quarry (Suzanne Smith, County of Santa Cruz Planning Department, pers. comm., 1993). Geyer Quarry, although currently inactive, was mined as recently as 1991 and could begin production again with adequate financing (S. Smith, pers. comm., 1993). Long-term plans of quarry operators are to mine the entire properties (S. Smith, pers. comm., 1993). Santa Cruz County is requesting and has received mining revegetation plans from some quarries. However, revegetation efforts likely will not provide for all of the essential requirements of the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle for successful feeding, cover, reproduction, and growth.

Recreational off-road motorcycle use has become popular in the Santa Cruz Mountains. Large group events (200+ people) occur on ponderosa pine sand parklands (Al Haynes, Watershed Analyst, San Lorenzo Water District, pers. comm., 1993). This recreational activity crushes and removes vegetation, causes compaction of soils, promotes soil erosion and runoff, and occasionally results in oil and gasoline spills.

Recreational use on public lands also threatens habitat occupied by these species. Henry Cowell Redwoods State Park includes about 8 ha (20 ac) of ponderosa pine sand parklands. An existing campground encompasses about half of this ponderosa pine habitat (Deborah Hilliard, California Department of Fish and Game, pers. comm., 1993, Sue Steinmetz, Henry Cowell Redwoods State Park, pers. comm., 1993). Quail Hollow Ranch, recently purchased by the county of Santa Cruz for development as a multipurpose regional park, contains approximately 17 ha (42 ac) of ponderosa pine sand parklands suitable for the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle (County of Santa Cruz 1990). The master plan for the park includes establishment of sports fields for soccer and softball, equestrian use with stables, picnic facilities, and an amphitheater. Without careful planning and consideration, facility construction and use will result in adverse impacts to these species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Amateur collecting for the Mount Hermon June beetle and Santa Cruz rain beetle has and does occur on a limited basis. Collection is restricted to the time period the species spend above ground as an adult (A. Hardy, pers. comm., 1993; Marilyn Perry, Santa Cruz County Agricultural Commissioners' Office, pers. comm., 1993). As these species become more uncommon, the interest of collectors is likely to increase; however, overutilization by collection is not known to occur at this time.

C. *Disease or predation.* Not known to be applicable.

D. *The inadequacy of existing regulatory mechanisms.* Regulatory mechanisms currently in effect do not provide adequate protection of the Mount Hermon June beetle, Zayante band-winged grasshopper, Santa Cruz rain beetle, or their habitat. There is no legal requirement for Federal agencies to consider and manage for these species during project design and implementation, although some Federal agencies have policies that encourage consideration of candidate species in the design and implementation of Federal projects.

At the State and local levels, regulatory mechanisms are also limited. These three taxa are not listed by the State of California under the California Endangered Species Act. State and local agencies may consider these taxa when evaluating certain activities for compliance with the California Environmental Quality Act and local zoning regulations. If an activity is identified as having a potential impact on these species, mitigation measures may be required by State and local regulating agencies to offset these impacts. Santa Cruz County requires that proposed projects comply with both general zoning requirements and environmental designations. However, the County has designated ponderosa pine sand parklands for quarry activity and zoned the area for special use that includes mining (S. Smith, pers. comm., 1993).

Public land ownership of existing and potential ponderosa pine sand parkland habitat for these three species is limited to two ecological preserves and two parks in the area. Only the Bonnie Doon Ecological Preserve and the small preserve within Quail Hollow Ranch provide protection for ponderosa pine sand parkland habitats. The two parks do not operate under mandates to manage for the Mount Hermon June beetle, Zayante band-winged grasshopper, Santa Cruz rain beetle, or ponderosa pine sand parklands.

E. *Other natural or manmade factors affecting its continued existence.* Pesticide use could pose a threat to these three taxa. If Mediterranean fruit flies or similar pest species are found within the Santa Cruz Mountains, aerial spraying of malathion or similar insecticide may occur within the range of the Mount Hermon June beetle, Zayante band-winged grasshopper, or Santa Cruz rain beetle. Local landowners may use pesticides to control targeted species of invertebrates around their homes and businesses. These pesticides may drift and kill non-targeted species such as the Mount Hermon June beetle, Zayante band-winged grasshopper, or Santa Cruz rain beetle. Pesticide application is expected at existing and planned golf courses and may occur on a limited basis at vineyards in the Santa Cruz Mountains.

Habitat loss has fragmented the already limited range of the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle into a patchwork of small, isolated remnants. Because of reduced population size and limited habitat availability, most of the remaining populations are vulnerable to extirpation from unpredictable environmental, genetic, and demographic events (Gilpin 1987). Extinction rates increase as habitat size decreases and distance from neighboring populations increases. These factors apply to the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle. As the remaining habitat units decrease in size, edge effect becomes increasingly important (i.e., smaller habitats have less space available to buffer adverse impacts from outside influences such as human disturbance or chemical contamination). In addition, populations in smaller habitat fragments are subject to the effects of genetic drift (the random loss of genetic variability). This phenomenon also reduces the ability of individuals and populations to successfully respond to environmental stresses, such as increased predation, diseases, or changes in climate.

Because the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle are adapted and restricted to ponderosa pine sand parkland, changes in primary vegetation are likely to result in decreased population viability and eventually local extirpation of these species. Ponderosa pine sand parkland is exhibiting a gradual change to mixed evergreen forest in some locations. Coast

live oak, madrone, and other species typical of mixed evergreen forest are encroaching into ponderosa pine sand parkland (Marangio and Morgan 1986). This encroachment has been attributed to the reduced frequency of fire (Morgan 1983). Historically, fire may have prevented the invasion of these mixed evergreen forest species that are not as well adapted to survive fire. Recent settlement of the area and associated suppression of fires to prevent property damage has aided in the establishment of mixed evergreen forest species in ponderosa pine sand parklands. The need for fire in maintaining ponderosa pine sand parkland is also supported by the occurrence of knobcone pine and, in some locations, Santa Cruz cypress (Holland 1986), both of which are fire tolerant.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Because the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle are threatened by one or more of the following factors—urban development, agriculture, recreational use, sand mining, fire frequency, pesticide use, and genetic restriction—the preferred action is to list the Mount Hermon June beetle (*Polyphylla barbata*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), and Santa Cruz rain beetle (*Pleocoma conjugens conjugens*) as endangered. Critical habitat is not being proposed for these species for reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Service designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that the designation of critical habitat is not prudent for the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is imperiled by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

In the case of the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle, the second criterion is met. All populations of the three species are found on State or private lands where Federal involvement in land-use activities does not generally occur. Additional protection resulting from critical habitat designation is achieved through the section 7 consultation process. Since section 7 would not apply to land-use activities occurring within critical habitat, its designation would not appreciably benefit the species.

Available Conservation Measures

Conservation measures provided to the species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is expected for activities occurring within habitats currently occupied by the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle.

Under section 4 of the Act, listing the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle would provide for the development of a recovery plan, which would bring together Federal, State, local government, and private agencies and individuals to develop conservation strategies for these species. The recovery plan would develop a framework of recovery activities, priorities, and funding requirements to accomplish conservation objectives and ensure the survival and recovery of the Mount Hermon June beetle, Zayante band-winged grasshopper, and Santa Cruz rain beetle.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations on listed wildlife and inquiries regarding them should be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241, facsimile 503/231- 6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor, Ventura Field Office (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rule is available upon request from the Ventura Field Office (see ADDRESSES section).

Author

The primary author of this proposed rule is Judy Hohman, Ventura Field Office (see ADDRESSES section) (telephone 805/644–1766).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 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.

2. Section 17.11(h) is amended for animals by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	*
Insects							
*	*	*	*	*		*	*
Beetle, Mount Hermon June.	*Polyphylla barbata*	U.S.A. (CA)	NA	E		NA	NA
*	*	*	*	*		*	*
Beetle, Santa Cruz rain	*Pleocoma conjugens conjugens.*	U.S.A. (CA)	NA	E		NA	NA
*	*	*	*	*		*	*
Grasshopper, Zayante band-winged.	*Trimerotropis infantilis*	U.S.A. (CA)	NA	E		NA	NA
*	*	*	*	*		*	*

Dated: April 25, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–11258 Filed 5–9–94; 8:45 am]

BILLING CODE 4310-65-P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition and Initiation of Status Review of 27 Foreign Butterflies

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service announces the 90-day finding that a petition to add seven kinds of foreign butterflies to the List of Endangered and Threatened Wildlife has presented substantial information indicating that the action may be warranted. A status review of these butterflies, together with 20 others that may be of similar concern, is initiated.

DATES: The finding announced herein was made on May 2, 1994. Comments and information may be submitted until September 7, 1994.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. The petition finding, supporting data, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m.,

Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act of 1973, as amended, requires that within 90 days of receipt of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, a finding be made on whether the petition has presented substantial information indicating that the requested action may be warranted, and that such finding be published promptly in the **Federal Register**. If the finding is positive, section 4(b)(3) also requires commencement of a review of the status of the involved species. The U.S. Fish and Wildlife Service (Service) now announces a 90-day finding on a recently received petition.

The petition was submitted by Ms. Dee E. Warenycia of Roseville, California. It was dated January 1, 1994, and was received by the Service on January 10, 1994. It requests that the following seven kinds of foreign swallowtail butterflies be added to the List of Endangered and Threatened Wildlife (50 CFR 17.11); *Teinopalpus imperialis, Eurytides marcellinus, Eurytides lysithous harrisianus, Parides ascanius, Parides hahneli, Troides (=Ornithoptera) meridionalis*, and *Papilio esperanza*. It was accompanied by appropriate detailed data sheets from the World Conservation Union (IUCN) Red Data Book *Threatened Swallowtail Butterflies of the World* (by N. Mark Collins and Michael G. Morris, 1985). The seven butterflies are classified therein as endangered, vulnerable, or rare, mainly because of environmental disruption and overcollection.

Of the petitioned species, *Teinopalpus imperialis* is reportedly threatened by overcollecting and rapid destruction of the Himalayan mountain forests upon which it depends. *Eurytides marcellinus* has a very restricted breeding habitat in Jamaica, where its larval foodplants are being destroyed by cultivation. *Eurytides lysithous harrisianus* has been eliminated by habitat destruction from all but one known site in southeastern Brazil, which itself is now under development. *Parides ascanius* is jeopardized by the drainage and development of its subcoastal swamp habitat near Rio de Janeiro. *Parides hahneli* is known only from three localities in Amazonian Brazil, with very specialized habitat, and is threatened by overcollection for commercial purposes. *Troides meridionalis* is threatened by the lumbering of its specialized rainforest habitat in New Guinea. *Papilio esperanza* is known only from one site in the cloud forest of Oaxaca, Mexico, and is vulnerable to overcollection.

The Service has examined the petition and supporting data, finds that substantial information has been presented indicating that the requested listing of the seven taxa of butterflies may be warranted, and now initiates a status review of these butterflies. In addition, the Service will take this opportunity to review the 20 other kinds of foreign swallowtail butterflies that are classified as endangered or vulnerable by the IUCN, and that are not now on the U.S. List of Endangered and Threatened Wildlife. Therefore, a total of 27 swallowtail butterflies, as designated in the accompanying table, is now under review.

TABLE.—SWALLOWTAIL BUTTERFLIES UNDER REVIEW

Name	Range
Teinopalpus imperialis.	Himalayas.
Eurytides marcellinus	Jamaica.
Eurytides lysithous harrisianus.	Brazil.
Eurytides iphitas	Brazil.
Graphium levassori	Comoro Islands.
Graphium sandawanum.	Philippines.
Battus zetides	Hispaniola.
Parides ascanius	Brazil.
Parides hahneli	Brazil.
Parides burchellanus	Brazil.
Parides (Atrophaneura) jophon.	Sri Lanka.
Parides (Atrophaneura) schadenberqi.	Philippines.
Troides dohertyi	Talaud (Indonesia).
Troides (Ornithoptera) meridionalis.	New Guinea.
Troides (Ornithoptera) croesus.	Moluccas (Indonesia).
Papilio esperanza	Mexico.
Papilio himeros	Brazil.
Papilio maraho	Taiwan.
Papilio osmana	Philippines.
Papilio carolinensis	Philippines.
Papilio moerneri	New Ireland (Papua New Guinea).
Papilio benguetanus	Philippines.
Papilio phorbanta	Reunion Island.
Papilio desmondi teita.	Kenya.
Papilio morondavana	Madagascar.
Papilio leucotaenia	Central Africa.
Papilio leucotaenia	Central Africa.
Papilio neumoegeni	Sumba (Indonesia).

The Service encourages the submission of appropriate data, opinions, and publications regarding these butterflies, as well as other kinds of foreign swallowtails that may warrant consideration for addition to the List of Endangered and Threatened Wildlife. In accordance with section 4(b)(3) of the Act, within 12 months of receipt of the petition, the Service will make another finding as to whether the requested listing of seven kinds of butterflies is warranted, not warranted, or warranted but precluded by other listing measures, and may also announce decisions with respect to other kinds of butterflies.

Authority: 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

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

Dated: May 2, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–11256 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 940423–4124, I.D. 031594E]

Northeast Multispecies Fishery

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

ACTION: Final notification to take no action under Flexible Area Action System (FAAS) #8.

SUMMARY: NMFS issues this notification of the Regional Director's concurrence with the recommendation of the New England Fishery Management Council (Council) to take no action pursuant to FAAS #8, as provided for under implementing regulations for Amendment 5 to the Northeast Multispecies Fishery Management Plan (FMP). FAAS #8 initiated a process to consider specified management actions to close an area to fishing due to suspected high levels of discards affecting mortality on juvenile, sub-legal, and spawning haddock in and around an area located offshore of Cape Cod, MA.

ADDRESSES: Copies of the fact-finding report of the Director, Northeast Region, NMFS (Regional Director), and the

Council's impact analysis may be requested from the New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01960.

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

SUPPLEMENTARY INFORMATION: Section 651.26 of title 50 CFR specifies that FAAS's may be proposed and implemented to provide protection to concentrations of juvenile, sub-legal, or spawning fish. As part of the FAAS process, the Regional Director, at the request of the Council's Multispecies Committee, initiates a fact-finding investigation of alleged discard problems, and the Council provides an impact analysis of alternative measures that might be implemented under a given FAAS action.

A notification initiating actions under proposed FAAS #8 was published on March 24, 1994 (59 FR 13923), informing the public of a potential problem with discards of spawning and sub-legal sized haddock in and around Closed Area I off Cape Cod, MA. The notification stated that the Council was considering recommending action to close the area to the use of gear capable of taking multispecies. As an alternative, the Council was also considering the implementation of other measures under the FMP and its implementing regulations, including, but not limited to, mesh size restrictions, catch limits, and other less restrictive measures. The notification specified that the required reports would be available on April 1, 1994, and that written comments on the action would be accepted through April 7, 1994, at which time a public hearing on the matter would be held.

A public hearing was conducted by the Council on April 7, 1994, where oral and written public comments were received. Two written comments were received by the close of business on the day of the public hearing. Both commenters supported implementation of FAAS #8, one citing a sea-sampled trip that occurred prior to or during the proposed FAAS #7; the other, expressing regret that FAAS #7 was not implemented.

None of the commenters who testified at the public hearing expressed support for FAAS #8 based on the additional data collected. Three of the four commenters expressed regret at the disapproval of FAAS #7, as did several members of the Council, who went on record as planning to consider protection of spawning haddock in and around Closed Area I under the provisions of Amendment 5 as a priority for the 1995 season. After careful consideration of the data, the Council concluded that the data indicated an apparent abatement of the discard problem, and recommended that the Regional Director take no action under proposed FAAS #8. After reviewing information presented in the required documents and the public testimony, the Regional Director concurred with the Council's recommendation not to implement any management measures under the proposed FAAS #8.

Classification

This action is authorized by 50 CFR part 651 and is consistent with the Magnuson Act and other applicable law.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: May 3, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–11247 Filed 5–9–94; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 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.

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on May 11 in room 600, 301 4th Street, SW., Washington, DC from 10 a.m. to 12 p.m.

From 10 a.m. to 11:30 a.m. the Commission will hold a panel discussion on public diplomacy in Africa. The panelists are Ambassador Lannon Walker, Senior Advisor to the Undersecretary of State for Political Affairs; and Robert LaGamma, Director, Office of African Affairs, USIA. At 11:30 a.m. the Commission will meet with Mr. Douglas Wilson, Director, Office of Congressional and Intergovernmental Relations, to discuss the State/USIA authorization for FY 1994–95 and USIA Congressional issues.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: May 5, 1994.

Cathy Brown,

Alternate Federal Register Liaison Officer.

[FR Doc. 94–11231 Filed 5–5–94; 4:34 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 94–014N]

National Advisory Committee on Meat and Poultry Inspection; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held on Tuesday, May 24 and Wednesday, May 25, 1994, from 8 a.m. to 5 p.m. each day, at the Fountain Suites Hotel, 321 Bercut Drive, Sacramento, California 95814, telephone (916) 441–1444.

The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, 301(a)(3), 301(c) of the Federal Meat Inspection Act, 21 U.S.C. 607(c), 624, 645, 661(a)(3) and 661(c) and sections 5(a)(3), 5(a)(4), 5(c), 8(b) and 11(e) of the Poultry Products Inspection Act, 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e).

The meeting will include discussion of as much of the following topics as time will permit:

1. Topics suggested by the Committee;
2. Standards and labeling issues;
3. Exemptions update;
4. Hazard Analysis and Critical Control Point (HACCP);
5. Unfinished business and items from the audience.

The Committee meeting is open to the public on a space available basis. Interested persons may file comments prior to and following the meeting. Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Mr. Fedchock on (202) 720–9150.

Done at Washington, DC, on May 5, 1994.

Terry L. Medley,

Acting Administrator.

[FR Doc. 94–11267 Filed 5–9–94; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 940403–4103]

RIN 0648–ZA03

Request for Proposals for Site Characterizations of the Monterey Bay and Gray's Reef National Marine Sanctuaries

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The Sanctuaries and Reserves Division is soliciting proposals to complete site characterizations of the Monterey Bay National Marine Sanctuary and the Gray's Reef National Marine Sanctuary.

DATES: Proposals must be postmarked by June 9, 1994. Applicants will be notified of results of review by August 8, 1994.

ADDRESSES: Helen Golde, Elizabeth Moore, or Delores Washington. Sanctuaries and Reserves Division, NOAA, 1305 East-West Highway, #12430, Silver Spring, Maryland, 20910. Phone: 301–713–3145; Fax: 301–713–0404.

CDR Terry Jackson. Monterey Bay National Marine Sanctuary, 299 Foam Street, suite D, Monterey, CA 93940. Phone: 408–647–4201; Fax: 408–647–4250.

Reed Bohne. Gray's Reef National Marine Sanctuary, 30 Ocean Science Circle, Savannah, GA 31411. Phone: 912–598–2345; Fax: 912–598–2367.

FOR FURTHER INFORMATION CONTACT: Monterey Bay: Elizabeth Moore at 301–713–3141, or Terry Jackson at 408–647–4258. Gray's Reef: Reed Bohne at 912–598–2345, or Delores Washington at 301–713–3132. Either site: Helen Golde at 301–713–3145.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et. seq.*) (MPRSA) establishes the National

Marine Sanctuary Program (NMSP). The Act authorizes the Secretary of Commerce to designate discrete areas as National Marine Sanctuaries (NMS) to promote comprehensive management of their ecological, research, conservation, education, historical, recreational, and aesthetic resources. National Marine Sanctuaries may be designated in coastal and ocean waters, in submerged lands and in the Great Lakes and their connecting waters. The National Marine Sanctuaries are administered by the Sanctuaries and Reserves Division (SRD) of the National Oceanic and Atmospheric Administration (NOAA) in the U.S. Department of Commerce. Section 309 of the MPRSA authorizes NOAA to conduct research, monitoring, evaluation, and education programs within NMS. Cooperative agreements are available to States, local governments, regional agencies, or other persons to carry out the purposes and policies of the MPRSA as described in this notice and authorized under section 311 of the MPRSA. This program is listed in the Catalog of Federal Domestic Assistance under "Marine Sanctuary Program," Number 11.429.

II. Information on National Marine Sanctuaries

A. Monterey Bay National Marine Sanctuary

The Monterey Bay National Marine Sanctuary (MBNMS) surrounds diverse habitats that are highly productive, due in part to the presence of strong upwelling of nutrient-rich waters. The mosaic of soft and hard bottoms, submarine canyon, rocky and sandy intertidal areas, and kelp forests of giant and bull kelp support a rich and abundant population of marine flora and fauna. The species-rich invertebrate population includes soft coral, sponges, clams, snails, crab, shrimp, abalone, sea urchins, mussels, and sea anemones. Over 345 species of fish are found in the Sanctuary and include pelagic, demersal, and benthic species. About 94 species of birds have been identified as utilizing the Sanctuary; the site is important to seabirds as a migratory stopover and as wintering grounds. Four species of sea turtles (leatherback, green, loggerhead, and Pacific ridley) occur within the waters of the Sanctuary. Breeding, feeding, and migration areas are provided for over 26 species of marine mammals.

The Sanctuary is accessible and hosts a high level of recreational use. Commercial fisheries such as salmon, rockfish, swordfish, tuna, squid, and anchovy are important to the regional economy, as is tourism. Oil and gas extraction, sand mining, and designation of ocean dump sites are prohibited within the Sanctuary. Major shipping lanes and military activity occur in portions of the site. Over 300 shipwrecks may exist within the boundaries and significant prehistoric cultural sites exist throughout the site and coastal areas.

B. Gray's Reef National Marine Sanctuary

Designated in January 1984, the Gray's Reef National Marine Sanctuary (GRNMS) surrounds one of the largest and most diverse nearshore "live bottom" habitats on the south Atlantic Continental Shelf. The variety and abundance of life at Gray's Reef in comparison with the barren sand flats which surround it is why the Reef is referred to as a "live bottom." The limestone outcrops, deposited over 13 million years ago, provide a firm and stable substrate to which a variety of sessile invertebrates can attach and prosper. The large invertebrate population includes sponges, hydroids, hard and soft corals, tubeworms, tunicates, sea urchins, and sea stars. The fish population includes pelagic, demersal, and benthic species such as blennies, groupers, basses, porgies, spadefishes, amberjacks, and, seasonally, the tropical fishes bluefish, mackerals, and barracudas. A variety of seabirds use the Sanctuary for feeding and as a migratory stopover. The threatened loggerhead sea turtle is frequently encountered around the ledges in the Sanctuary. The endangered northern right whale uses the waters of the Sanctuary during the winter calving season.

The Sanctuary is located off shore of Savannah, Georgia approximately 17.5 nautical miles from the nearest point of land. Recreational fishermen and scuba divers are the most frequent visitors to the Sanctuary. Commercial fishing is usually not found within the Sanctuary as wire fish traps and bottom trawling are prohibited.

III. Scope of Work

The objective of these projects is to collect and synthesize existing information and draft site descriptions of the MBNMS or the GRNMS. The recipient(s) will be responsible for gathering existing information on environment, communities, habitats, and cultural resources in the MBNMS or GRNMS. The scope of these projects does not include collection of new data. This information is to be synthesized together into documents which provide comprehensive descriptions of the Sanctuaries. These documents will give interested parties an overview of the resources and characteristics of the Sanctuaries. In addition, they will serve to identify gaps in knowledge about the Sanctuaries, which will help to target future research and monitoring efforts.

Specific Tasks

The ideal scope of work includes the following tasks.

(1) The recipient will be responsible for conducting a search of published and unpublished literature and data associated with the MBNMS or GRNMS. This should include, but is not limited to, government reports; theses, dissertations and other student reports; final reports of grants and other competitive awards; scientific literature publications; books; and available databases.

(2) All literature is to be entered into a bibliographic database. Claris FileMaker Pro should be used.

(3) The collected literature is to be evaluated and synthesized into a comprehensive document describing the Sanctuary. Existing review papers and the Monterey Bay National Marine Sanctuary or Gray's Reef National Marine Sanctuary Final Environmental Impact Statements should be used as a basis for this synthesis. This document should include:

- An introduction to the MBNMS or GRNMS, including a description of the National Marine Sanctuary Program.
- Descriptions of the environmental, cultural, historical, and socioeconomic resources within the Sanctuary. (The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), mandates that Federal agencies that manage public lands must assess and inventory the cultural resources under their aegis).
- Descriptions of the biological communities within the Sanctuary. This should include description of the prominent species, including threatened and endangered species, and interactions found within each of these communities.
- Descriptions of ecosystem functions. This should include discussion of how the various biological communities interact with one another. Discussions of spatial and temporal variability should also be included.

Identification of data gaps should be included. A detailed outline of the topics to be covered in this document is included in Appendices I and II. An existing site characterization is available from SRD upon request. No new data should be collected for this document; all analyses should be based on existing information. The document is to be submitted in hard copy and on 3.5"

floppy disk. Microsoft Word for Macintosh should be used, if possible. SRD will be responsible for printing of the final document.

All draft and final reports shall be written in clear, concise and correct English. All products should be thoroughly proofread by an experienced technical editor identified in the work plan. The technical editor shall ensure that grammar, punctuation, table and figure formats, and sentence and paragraph structure are correct and consistent throughout. Particular attention shall be paid to producing a final report that communicates technical issues in an understandable form.

IV. Availability of Funds & Project Duration

Up to $100,000 for MBNMS and $30,000 for GRNMS are available in FY94 for these projects. Funds will be awarded through a cooperative agreement between NOAA and the selected applicant(s). SRD is aware that these projects may take longer than one year to complete; the duration of the award may be up to 36 months. The Department of Commerce may not incrementally fund research work orders of multiple year duration that are nonseverable. Thus, although the work under this notice may be completed over a period of up to 36 months, a finished work product must be completed with the alloted budget. The applicant is responsible for determining the scope of the finished work product based on what s/he feels can be completed with this budget. Future funding may be available to complete additional work products. (For example, an applicant may determine that only a characterization of the biological component of Sanctuary resources may be feasible with the alloted budget. Pending the availability of additional funds, the Sanctuary might then issue an additional RFP to complete the cultural resources assessment.) Although in-kind match of Federal funds is not mandatory, it is encouraged (see evaluation criteria).

If an application is selected for funding, the Department of Commerce (DOC) has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of DOC.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce are made. In addition, any researchers who are past due for submitting acceptable final reports of any previous SRD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by SRD. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

V. Guidelines for Proposal Preparation; Proposal Review and Evaluation

Proposals not following these guidelines will be returned to the applicant without further review. Applicants should submit three copies of proposals postmarked by June 9, 1994, to: Ms. Elizabeth Moore (MBNMS) or Ms. Helen Golde (GRNMS) at the Sanctuaries and Reserves Division (see addresses section).

A. Application Kit

Application kits are available from any of the addresses listed in the addresses section. Application kits will include all necessary Federal forms, checklist for complete application packet, complete budget preparation information, and description of necessary proposal narrative. The contents of the application kit is outlined below.

1. Federal Forms

Federal forms SF–424, SF–424A, SF–424B, CD–511, CD–512 (copy where applicable), SF–LLL (where applicable), negotiated indirect cost rate and audit information must all be submitted with the application. These forms are described in the application kit and Section VI. General Requirements, below.

2. Table of Contents, Lists of Figures and Tables

These should list the major contents of the proposal and the appropriate page numbers.

3. Project Description

The main body of the proposal should be a detailed statement of the work to be undertaken, not exceeding 20 double spaced pages. It should describe in detail the amount and scope of work to be completed during the project, how this work will be completed, the proposed project duration, and the qualifications of the applicant and any subrecipients to complete the work (see evaluation criteria).

The proposal must include a complete description of how the project will be managed, including the name and expertise of the principal investigator and the name(s), expertise, and task assignments of team members. Evidence of ability to successfully complete the proposed project should be supported by reference to similar efforts performed and areas of expertise. Curricula vitae (not to exceed 3 pages for each investigator) listing qualifications related to professional and technical personnel should be provided. The proposal should discuss and explain any portion of work expected to be subcontracted, and identify subrecipient(s).

Complete references for current literature, research, and other appropriate published and unpublished documents cited in the text of the proposal must also be included.

4. Milestone Schedule

A milestone schedule is required in the proposal. This schedule should show, in table form, anticipated dates for completing data collection, data analysis, database completion, progress reports, the draft technical report, the final technical report and other related activities. Use "Month 1, Month 2," rather than June, July, etc., in preparing these charts. (SRD Headquarters requires at least six weeks from time of receipt to review draft technical reports.) The milestone schedule should reflect the entire duration of the project.

5. Budget

The applicant may request funds under any of the categories listed below as long as the costs are reasonable and necessary to complete the projects and are determined to be in accordance with 15 CFR part 24 and OMB Circulars A–21, A–122, A–87, and A–110. A complete description of budget constraints is provided in the application kit.

The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Budget categories are to be broken down as follows, clearly showing both Federal and any non-Federal shares side by side:

—Salaries and Wages.
—Fringe Benefits.
—Equipment.
—Travel.
—Other Direct Costs.
—Indirect Costs.

B. Evaluation Criteria and Selection Procedures

Proposals will be reviewed by SRD staff, Sanctuary research advisory committees, and, if necessary, outside peer reviewers. Proposals will be evaluated on the criteria listed below. Each reviewer will score all proposals on each of the categories and give written comments. The scores will be weighted according to the percentages listed in parentheses. Final funding decisions will be made by the appropriate site and regional managers for each sanctuary based on average scores and written comments. If written comments merit, the proposal with the highest numerical rank may not be chosen. Applicants will be notified of results of review by August 8, 1994.

Scope of Work & Schedule: (45%)

The specific tasks that the applicants plan to complete over the duration of the award will be considered. A realistic schedule to complete the entire project should be presented. Preference will be given to otherwise qualified applicants able to complete the most amount of work.

Applicant Expertise: (30%)

- Literature search ability: The applicant should show experience in conducting comprehensive literature searches. Access to appropriate data bases should be shown.
- Knowledge of the existing literature and area: The applicant should describe their knowledge of the Monterey Bay or Gray's Reef area and their familiarity with the existing literature.
- Scientific and technical expertise: The applicant must show appropriate background to compile and synthesize the information. This should include expertise in marine and coastal sciences, damage assessment/restoration, and cultural/historical resources. This criterion is very important as the recipient must be able to synthesize the information into the final document.
- Writing ability: The applicant should show a history of writing and editing ability.

Budget: (25%)

A realistic budget, appropriate to the amount of work to be completed should be presented. Any matching funds should be identified. Preference will be given to otherwise qualified applicants able to secure matching funds or in-kind services.

VI. General Requirements

Recipients and subrecipients are subject to all Federal laws and Federal and DOC regulations, policies, and procedures applicable to Federal financial assistance awards.

All non-profit and for-profit applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible in accordance with Public Law 103–121, Sections 606 (a) and (b).

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form, prescribed above;

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form, prescribed above;

3. *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and,

4. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," prescribed above as required under 15 CFR Part 28, Appendix B.

5. *Lower Tier Certifications.* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and disclosure from SF–LLL, "Disclosure of Lobbying Activities," prescribed above. The original form CD–512 is intended for the use of recipients. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

VII. Classification

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

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law because this notice concerns grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

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

The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Approval Numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Dated: March 30, 1994.

W. Stanley Wilson,

Assistant Administrator, Ocean Services and Coastal Zone Management.

Appendix I: Outline of MBNMS Site Characterization

I. Executive Summary of the Site Characterization
II. Introduction to the MB National Marine Sanctuary
A. Objective of the Site Characterization
B. The National Program and Establishment of MBNMS
C. Significance of Resources
III. Environmental and Historical/Cultural Conditions That Shape MBNMS
A. Geologic History & Mineral Resources
B. Present Geology
1. Structure and tectonics
2. Geohazards
3. Nearshore sedimentary and canyon processes
C. Climate
D. Meteorology and Physical Oceanography
1. Currents and other physical forces
2. Water characteristics (i.e. temperature, salinity, chemistry, etc.)
3. Seasonal and other temporal patterns
E. Archaeological, Cultural and Historical Resources
F. Socioeconomic Uses
1. Fishing
2. Vessel traffic
3. Ecotourism
4. Recreation
IV. Biological Communities
A. Kelp Forest and Rocky Subtidal Habitats
B. Rocky Intertidal Habitat
C. Soft Benthic Habitats
1. Sandy beaches
2. Shallow demersal habitats
3. Deeper demersal (shelf) habitats
D. Canyon and Steep Slope Habitats
E. Pelagic Habitats
1. Near-surface zone
2. Mid-water zone
3. Abyssal zone
F. Estuarine Habitats
V. Ecosystem Function
A. Nutrient Interactions
B. Energy Flow
C. Temporal and Spatial Variability
VI. Appendices
A. Maps
B. Common Species Lists For Biological Communities
C. Lists of Threatened and Endangered Species (State and Federal Listing)
D. Bibliography (including both cited and uncited literature)

Appendix II: Outline of GRNMS Site Characterization

I. Executive Summary of the Site Characterization
II. Introduction to the GR National Marine Sanctuary
A. Objective of the Site Characterization
B. The National Program and Establishment of GRNMS
C. Significance of Resources
III. Environmental and Historical/Cultural Conditions That Shape GRNMS
A. Geologic History & Mineral Resources
B. Present Geology and Sedimentary Processes
C. Climate
D. Meteorology and Physical Oceanography
1. Currents and other physical forces
2. Water characteristics (i.e. temperature, salinity, chemistry, etc.)
3. Seasonal and other temporal patterns
E. Archaeological, Cultural and Historical Resources
F. Socioeconomic Uses
1. Fishing
2. Vessel traffic
3. Tourism
4. Recreation
5. Military Operations
IV. Biological Communities
A. Plankton
B. Seaweeds
C. Invertebrates
D. Finfish
E. Turtles and other marine reptiles
F. Pelagic Birds
G. Marine Mammals
V. Ecosystem Function
A. Nutrient Interactions
B. Energy Flow
C. Temporal and Spatial Variability
D. Community Ecology
VI. Appendices
A. Maps
B. Common Species Lists for Biological Communities
C. Lists of Threatened and Endangered Species (State and Federal Listing)
D. Bibliography (including both cited and uncited literature)

[FR Doc. 94–11003 Filed 5–9–94; 8:45 am]
BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ballistic Missile Defense Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Washington, DC, on May 18–19, 1994. Less than 15 days notice is being given due to difficulty in convening all advisory committee members for this session.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense through the USD(A&T) on all matters relating to BMD acquisition, system development, and technology.

In accordance with section 10(d), as amended (5 U.S.C., App. II, (1982)), it has been determined that this BMD Advisory Committee meeting concerns matters listed in (5 U.S.C. 552(c)(1) (1982)) and that accordingly this meeting will be closed to the public.

Dated: March 4, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–11148 Filed 5–9–94; 8:45 am]
BILLING CODE 5000–04–M

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement for the Realignment of the Naval Air Station Pensacola, FL

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Proposed Realignment of NAS Pensacola, Florida.

In response to the recommendations of the 1993 Defense Base Closure and Realignment Commission and to legislative requirements in the 1990 Base Closure and Realignment Act (Pub. L. 101–510), Naval Training Center San Diego, California, is to be closed and NAS Memphis, Tennessee, is to be realigned. Some of the naval training now offered at these centers will be relocated to NAS Pensacola, Florida. This consolidation of service schools at NAS Pensacola would bring approximately 1,100 military-staff personnel and an on-board average of 4,230 students. Twenty construction projects are required that include instructional training, and administrative facilities, enlisted quarters, and approximately 118 new family housing units at nearby Corry Station. The proposed projects are sited to be consistent with surrounding land use and to occur on previously disturbed land.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice. A public hearing will be held at Pensacola Junior College, Warrenton Campus, room 3000, 555 West Highway 98, Pensacola, Florida, on Thursday evening, on May 26, 1994, from 7 p.m. until the end of public comment or until 12 midnight.

The public hearing will be conducted by the Navy. Federal, state, and local agencies and other interested parties are invited and urged to be present or represented at the hearing. Oral

statements will be heard and transcribed by a stenographer; however to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by June 13, 1994, to become part of the official record.

Additional information concerning this notice may be obtained by contacting Ronnie Lattimore (Code 203RL), Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, South Carolina 29419–9010, telephone (803) 743–0888.

Dated: May 5, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–11204 Filed 5–9–94; 8:45 am]

BILLING CODE 3810–AE–M

Notice of Public Hearing for the Draft Programmatic Environmental Impact Statement for the Miramar Landfill General Development Plan, Fiesta Island Replacement Project/Northern Sludge Processing Facility, and the West Miramar Landfill Overburden Disposal, at Naval Air Station Miramar, San Diego, CA

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy, in cooperation with the City of San Diego, has prepared and filed with the U.S. Environmental Protection Agency the Draft Programmatic Environmental Impact Statement (DPEIS) for the Miramar Landfill General Development Plan, Fiesta Island Replacement Project/ Northern Sludge Processing Facility, and the West Miramar Landfill Overburden Disposal, at Naval Air Station Miramar, San Diego, California.

The DPEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and libraries. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DPEIS findings and to solicit comments will be held on Tuesday, May 31, 1994, beginning at 7 p.m., in the Madison High School auditorium, 4883 Doliva Street, San Diego, California.

The public hearing will be conducted by the Navy. Federal, state and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to ensure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record for the study. Equal weight will be given to both oral and written statements. Oral statements should be limited to five minutes or less.

Statements may also be submitted to the address listed at the end of this notice. All written statements must be postmarked by June 13, 1994, to become part of the official record.

The DPEIS identifies a General Development Plan proposed by the City of San Diego for phased long-term implementation and a number of specific projects comprising Phase I, which is proposed for 1994 implementation. These projects are needed to accomplish the City's master plan to expand existing solid waste facilities and to site new waste processing and biosolids processing facilities.

The point of contact for obtaining copies of the DPEIS is Commanding Officer, Naval Air Station Miramar, Attn: Mr. Roger Hillhouse (Code 187RH), 45249 Miramar Way, San Diego, California 92145–5005, telephone: (619) 537–1102.

This information will be made available in alternative formats upon request. To request an agenda in an alternative format, or to request a sign language or oral interpreter for the meeting, call the Metropolitan Wastewater Department at (619) 533–4200 at least five working days prior to the meeting to ensure availability. Assistive listening devices are available for the meeting upon request.

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–11205 Filed 5–9–94; 8:45 am]

BILLING CODE 3810–AE–M

Notice of Intent To Prepare an Environmental Impact Statement for the Disposal of Dredged Materials in San Diego Bay, San Diego, CA

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the disposal of dredged materials in San Diego Bay, San Diego, California.

Several dredging projects are proposed by the Navy in the central portion of San Diego Bay. Maintenance dredging is required for maintaining existing channels and berthing areas. Pier 2 and Pier 3 dredging projects will provide additional safe navigational and berthing depth for deep draft power intensive ships which will be homeported in San Diego Bay through Base Realignment and Closure (BRAC) at naval stations in Long Beach and the San Francisco Bay area, and ships which are planned for construction.

Approximately half of the dredged materials are expected to contain contaminated sediments which may be restrained from disposing them in the ocean. These sediments have accumulated in the bay bottom either from urban-industrial source runoff upstream from San Diego Bay, or potentially from past pier-side maintenance activities. Determination of appropriate processes and locations for placement of dredged contaminated sediments and their effect on the regional environment will be evaluated in the EIS.

Disposal alternatives for dredged contaminated sediments currently identified for consideration in the EIS are: (1) Placement in a confined location capped with clean materials, such as sand or clay, inside San Diego Bay; (2) placement with capping in areas such as the Seventh Street Channel (Paleta Creek) to create or enhance biological habitat; (3) placement behind bulkheads in bay waters such as Paleta Creak to create "fastland" or reclaimed land; (4) placement at a confined upland location such as sites on Naval Station, San Diego or Naval Air Station North Island for dewatering and drying; and (5) placement of contaminated sediments in either non-hazardous waste landfills (if treated or "remediated" to remove hazardous components) or hazardous waste landfills (if not remediated).

Environmental issues which will be discussed in the EIS include: Methods of dredging and disposal; biological impacts resulting from dredging and

sediment disposal; geological impacts caused by dredging; air quality impacts from dredging equipment operations and disposal activity; hydrological and water quality impacts from dredging and disposal; treatment technologies; aesthetics, cultural resources, and health and safety impacts. Issue analysis will include an evaluation of direct, indirect, short-term, long-term, and cumulative impacts associated with the proposed action. The decision to implement the proposed action or any alternatives to the proposed action will not be made until the NEPA process is complete.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying significant issues relative to this action. The Navy will hold a public scoping meeting on Thursday, 26 May, 1994, beginning at 7 p.m. at the Naval Facilities Engineering Command, Southwest Division, 1220 Pacific Highway, San Diego, California. This meeting will be advertised in San Diego area newspapers.

A formal presentation will precede public testimony. Navy representatives will be available at the scoping meeting to receive comments from the public. It is important that federal, state, and local agencies, as well as interested individuals, take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the EIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than 13 June 1994 to: Commanding Officer, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190 (Attn: Ms. Sherry Ashbaugh, Code 232.SA), telephone (619) 532–1159.

Dated: May 5, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–11206 Filed 5–9–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 9, 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 Linda Clark Tague, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Linda Clark Tague (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Linda Clark Tague at the address specified above.

Dated: May 5, 1994.

Linda Clark Tague,

Acting Director, Information Resources Management Service.

Office of the Under Secretary

Type of Review: New
Title: National Evaluation of the Set-Aside for Teacher Training and Innovation in Adult Education
Frequency: One time
Affected Public: State or local governments
Reporting Burden:
Responses: 52
Burden Hours: 104
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey of state directors of adult education is part of a comprehensive evaluation of the Section 353 (National Literacy Act) set-aside designed to provide the Department a description of how these funds are administered and the nature and effectiveness of the training and innovation activities they support.

[FR Doc. 94–11236 Filed 5–9–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Cancellation of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the postponement of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board.

Supplementary Information: The meeting of the Environmental Management Advisory Board scheduled to be held at the Radisson Suite Hotel, 700 H Avenue East, Arlington, Texas 76011 on May 17 and 18, 1994 is postponed. (Previously published on 4-20–94 (59 FR 18803))

A notice will be published in the **Federal Register** when this meeting is rescheduled.

For Further Information Contact: James T. Melillo, Executive Secretary, Environmental Management Advisory Board, EM–1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4400.

Issued at Washington, DC on May 5, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–11262 Filed 5–9–94; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Notice of Floodplain and Wetlands Involvement for Idaho Wildlife Mitigation Projects

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: BPA proposes to fund and implement the Wildlife Mitigation Agreement for Dworshak Dam (Dworshak Agreement) in floodplains and wetlands located in Nez Perce, Lewis, and Latah Counties, Idaho. The purpose of the Dworshak Agreement is to establish an arrangement whereby BPA would provide funds to the State of Idaho and the Nez Perce Tribe to mitigate wildlife and wildlife habitat losses within the State of Idaho that resulted from construction of Dworshak Dam and its reservoir.

In addition to the Dworshak Wildlife Mitigation Project, BPA is also proposing to fund and implement the South Fork Snake River Programmatic Management Plan in floodplains and wetlands located in Bonneville, Jefferson, and Madison Counties, Idaho. The purpose of the project is to mitigate wildlife and wildlife habitat losses that resulted from construction of Palisades Dam and its reservoir.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), BPA will prepare a floodplain and wetlands assessment and will perform these proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplains and wetlands.

The assessment will be included in the environmental assessments (EAs) being prepared for the proposed projects in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the EAs.

DATES: Comments are due to the address below no later than June 2, 1994.

FOR FURTHER INFORMATION CONTACT: Roy B. Fox, PG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–4261, fax number 503–230–3752.

SUPPLEMENTARY INFORMATION: Activities for the Dworshak Wildlife Mitigation Project would be conducted by two different entities: the State of Idaho and the Nez Perce Tribe. The State would conduct activities within the Pene Lands area. This project area consists of 24,000 hectares (60,000 acres) in the Craig Mountains located southeast of Lewiston, Idaho. This area ranges from 335 to 1,585 meters (1,100 to 5,200 feet) in elevation and is located between the Salmon and Snake Rivers. As specified in the proposed Dworshak Agreement, the State would only implement wildlife and wildlife habitat protection, mitigation, and enhancement activities. The types of activities that may be implemented include: fencing to exclude livestock to protect wetlands, riparian areas, and water quality; planting native plant species to increase the quantity and quality of native plant communities; rehabilitating and enhancing riparian areas and wetlands; planting riparian vegetation to compensate for vegetation adversely affected by livestock grazing; as well other activities that would benefit wildlife and wildlife habitat.

The Tribe is focusing on the lower Clearwater River drainage between Hatwai Creek and Kooskia, Idaho. All activities that the Tribe would implement would take place within an approximate 117 kilometer (73-mile) segment of the Clearwater River from Hatwai Creek to the Middle Fork of the Clearwater River near Kooskia, Idaho. The types of activities that may be implemented include: protecting island habitat for Canada geese along the Clearwater River and its tributaries; creating perch sites for raptors; as well as other activities that would benefit wildlife and wildlife habitat.

All activities for the South Fork Snake River Programmatic Management Plan would take place within the river corridor of the 104 kilometer (65 mile) segment of the South Fork Snake River starting downstream of the Palisades Dam and ending at the confluence of the South Fork with the Henry's Fork. Proposed mitigation activities include: (1) Land and easement purchases which would have no effect on wetlands or floodplains; (2) fencing riparian areas to protect riparian vegetation from livestock grazing; (3) planting riparian vegetation (e.g., cottonwoods) in suitable areas to compensate for vegetation adversely affected by the operation of Palisades Dam and livestock grazing; (4) improving bald eagle nest sites by tree topping, pruning, thinning, planting, and installing artificial nest structures; and (5) revegetating agricultural lands with riparian or upland vegetation. These activities may take place within the 100-year floodplains of the South Fork Snake River and its tributaries, as well as within riparian wetlands along the river. Because the activities are expressly for the purpose of protecting and enhancing riparian areas, there are no alternatives to conducting them in these areas other than the No-Action Alternative.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on April 15, 1994.

Roy B. Fox,

NEPA Compliance Officer, Office of Power Sales.

[FR Doc. 94–11261 Filed 5–9–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Floodplain and Wetlands Involvement for Lower Yakima Valley Wetlands and Riparian Project

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: BPA proposes to implement an agreement with the Yakima Indian Nation to secure property and conduct wildlife habitat restoration activities for the Lower Yakima Valley Wetlands and Riparian Mitigation Project in floodplain and wetlands located on the Yakima Indian Reservation in the State of Washington.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

The assessment will be included in the environmental assessment (EA) being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the EA.

DATES: Comments are due to the address below no later than June 2, 1994.

FOR FURTHER INFORMATION, CONTACT: Roy B. Fox, PG, Bonneville Power Administration, P.O. Box 3621,

Portland, Oregon 97208–3621, phone number 503–230–4261, fax number 503–230–3752. Or Robert Shank, PG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–5115.

SUPPLEMENTARY INFORMATION: The project area is 20,340 hectares (50,308 acres) of lower elevation bottomlands, which includes restorable aquatic, riparian, and upland habitats. The majority of the land is presently used for agricultural practices. The proposed activities are necessary to mitigate for wildlife and wildlife habitat adversely affected by the construction of Bonneville, The Dalles, John Day, and McNary Federal Dams, and their reservoirs located on the lower Columbia River.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on April 15, 1994.

Roy B. Fox,

NEPA Compliance Officer, Office of Power Sales.

[FR Doc. 94–11260 Filed 5–9–94; 8:45 am]

BILLING CODE 6450–01–M

Availability of the Non-Federal Participation Federal Marketing and Joint Ventures Record of Decision

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Record of Decision (ROD) on Non-Federal Participation Federal Marketing and Joint Ventures.

SUMMARY: BPA has adopted Federal Marketing and Joint Ventures which constitutes a comprehensive BPA marketing objective for the Pacific Northwest-Pacific Southwest Intertie. To implement this concept, BPA intends to negotiate an array of flexible, market-oriented contracts, expanded Intertie access for non-BPA parties, efficient use of Federal Columbia River resources, and facilitation of efficient, coordinated West Coast development of generating resources. Federal Marketing and Joint Ventures will facilitate non-BPA Intertie access in a manner consistent with the Energy Policy Act of 1992.

DOCUMENTS AVAILABLE: If you would like a copy of the Non-Federal Participation Federal Marketing and Joint Ventures ROD, please call our document request line, toll-free 800–622–4520, and ask for the Non-Federal Participation Federal Marketing and Joint Ventures Record of Decision.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Flynn at 206–418–2136, or the Public Involvement office in Portland. Telephone numbers, voice/TTY, for the Public Involvement office are: 503–230–3478 in Portland, and toll-free 800–622–4519 for the rest of the United States.

Issued in Portland, Oregon on April 14, 1994.

Jack Robertson,

Deputy Administrator.

[FR Doc. 94–11259 Filed 5–9–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 9088–017 New Hampshire]

Lower Village Water Power Associates; Availability of Environmental Assessment

May 4, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed an application to amend the license for the Lower Village Hydroelectric Project located on the Sugar River, Sullivan County, New Hampshire. The application is to (1) allow the licensee to retain a partially constructed dam about 250 feet downriver from the authorized location of the dam and (2) change the configuration of the licensed project. An Environmental Assessment (EA) was prepared for the application. In the EA, Commission staff finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriated documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 9088–017 to all comments. For further information, please contact Steve Hocking at (202) 219–2656.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11181 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. JD94–05838T Oklahoma–76 and JD94–05839T Oklahoma–77]

State of Oklahoma; NGPA Notice of 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, Woodford, Hunton and Viola Formations, underlying portions of McClain and Garvin Counties, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The Oklahoma–76 recommended area consists of the NE/4 of Section 35, in T6N, R4W, in McClain County, Oklahoma. The Oklahoma–77 recommended area consists of the NW/4 of Section 16, in T4N, R3W, in Garvin 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 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. 94–11202 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR94–8–000]

All American Pipeline Co.; Notice of Complaint

May 4, 1994.

Take notice that on April 29, 1994, Chevron U.S.A. Products Company (Chevron) filed a complaint against All American Pipeline Company (AAPL).

Chevron argues that AAPL is violating section 3 of the Interstate Commerce Act

(ICA), 49 U.S.C. 3, and its FERC Tariff No. 23 by commingling certain crude oil in its common stream. Chevron requests that the Commission act on an emergency basis and order AAPL to show cause why the Commission should not find AAPL to be in violation of Section 3 of the ICA and its FERC Tariff No. 23.

Chevron states that it is a producer and shipper on AAPL of crude oil produced from the Point Arguello field offshore California. Chevron states that it ships in AAPL's Outer Continental Shelf (OCS) common stream. AAPL has announced that, beginning as soon as May 1, 1994, it will accept for shipment in the OCS common stream crude oil produced by Exxon U.S.A. Company (Exxon) from two new offshore platforms, the Heritage and Harmony platforms. Chevron argues that the Heritage and Harmony platforms are not in the Point Arguello field. Chevron states that Exxon has refused to provide information about the quality and/or characteristics of the crude oil from these two platforms. Chevron submits that AAPL's imminent commingling and transportation of Harmony and Heritage crude oil in its OCS common stream discriminates against existing OCS common stream shippers and poses a severe threat of material disadvantage and significant economic and other injury to the existing shippers and producers of Point Arguello crude oil.

Chevron submits that until the matters raised by this complaint are resolved, existing shippers and producers of Point Arguello crude will be unduly disadvantaged and commercially injured. Chevron argues that AAPL's apparent intention to ignore Item No. 10 of its Tariff by accepting tenders of Harmony and Heritage production and commingling it with the OCS common stream is in contravention of the ICA.

Chevron requests that the Commission issue an order shortening the time for filing answers to the complaint.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before May 20, 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. Answers to this complaint shall be due on or before May 20, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11182 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–182–001 and TM94–3–31–001]

Arkla Energy Resources Co., Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, Arkla Energy Resources Company (AER) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Sub Fourth Revised Sheet No. 4
Sub Fourth Revised Sheet No. 4.1 (effective April 1, 1994)
Sub Fifth Revised Sheet No. 4
Sub Fifth Revised Sheet No. 4.1 (effective May 1, 1994)
First Revised Sheet No. 4.3 (effective April 1, 1994)

AER states that the revised tariff sheets are being filed in compliance with the April 14, 1994, order of the Commission in Docket No. RP94–182–000 and the April 20, 1994, letter order in Docket No. TM94–3–31–000.

Pursuant to said orders, AER states that the proposed tariff sheets reflect AER's balancing revenue credit as a negative surcharge.

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 11, 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. 94–11180 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–521–000]

Columbia Gulf Transmission Co.; Application

May 4, 1994.

Take notice that on May 3, 1994, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP94–521-000 an application pursuant to section 7(b) of the natural Gas Act for authorization for Columbia Gulf to abandon a transportation and exchange service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that, by Commission order issued December 21, 1978, in Docket No. CP78–539, Columbia Gulf, Columbia Gas Transmission Corporation (Columbia Gas) and Tennessee Gas Pipeline Company (Tennessee) were authorized to perform a transportation and exchange service involving deliveries at points of interconnection of their systems located in the states of Louisiana, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey and Offshore Louisiana. Columbia Gulf indicates that the service was performed under the terms of a letter agreement dated January 24, 1978, on file as Columbia Gulf's Rate Schedule X–59, Columbia Gas' Rate Schedule X–78 and Tennessee's Rate Schedule X–58. It is indicated that deliveries were made on a gas-for-gas basis, and imbalances were eliminated within sixty days.

Columbia Gas informed Columbia Gulf by letter dated January 12, 1994, that is desired to have the service terminated. It is stated that Tennessee and Columbia Gas have agreed to a stipulation and agreement, filed in Docket No. RP–113–000, terminating all firm transportation and storage contracts between Columbia Gas and Tennessee through the permanent assignment of the Tennessee capacity to Columbia Gas' customers and the payment of a negotiated exit fee by Columbia Gas to Tennessee in consideration for Tennessee's agreement to the abandonment of the unassigned capacity. It is also stated that, as part of that stipulation, Tennessee and Columbia Gas have agreed to terminate various services, including the above-mentioned transportation and exchange service, involving Columbia Gulf. Columbia Gulf states that it is filing for abandonment authorization separately because it is not a party to the above-mentioned stipulation and agreement.

Columbia Gulf does not propose to abandon any facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 18, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11183 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–229–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, containing changes in rates for effectiveness on June 1, 1994:

Third Revised Sheet No. 21
Fourth Revised Sheet No. 22
Third Revised Sheet No. 23

According to Granite State, the increased rates for firm and interruptible transportation services rendered for its affiliated distribution customers, Bay State Gas Company and Northern Utilities, Inc., are based on a test period cost of service consisting of the 12 months of actual operations ending December 31, 1993, adjusted for known and measurable changes occurring by September 30, 1994. It is further stated that the test period cost of service reflects costs for recent additions to plant, projected additions during the test period, adjusted operating and maintenance expenses, and ad valorem taxes.

Granite State states that the depreciation charges in the cost of service are based on the depreciation rates established in Granite State's last rate case. According to Granite State, the test period cost of service reflects its current costs for debt and equity, for return on its adjusted rate base and related federal and state income taxes. It is stated that the debt and equity costs are based on an adjusted capital structure consisting of 60.3 percent equity and 39.7 percent debt. Granite State states that an overall return of 11.67 percent is claimed on rate base which includes and implicit return of 14.2 percent on the equity component in the adjusted capital structure.

Granite State further states that the test period cost of service includes an increase in the annual amortization of the costs to convert a leased crude oil pipeline to natural gas service approved by the Commission in Docket No. CP87–39–000. Granite State Gas Transmission, Inc., 40 FERC 61,165 (1987).

According to Granite State, the amortization of the conversion costs reflected in its existing rates is based on a life of the lease extending to March 31, 1999. Granite State states that the owner of the leased pipeline exercised an option to terminate the lease on March 31, 1996 and Granite State negotiated an extension of the lease to March 31, 1999. It is said that the new termination date shortens the period that Granite State will be operating the leased line by 29 months and the amortization of the investment costs to convert the leased line to natural gas service has been adjusted in the test period cost of service to reflect the shortened life of the lease.

Granite State further states that, in connection with the extension of the lease of the converted pipeline it agreed to pay for part of the dismantling, removal and restoration costs to reconvert the pipeline to oil transportation service. According to Granite State, its commitment is limited to $1 million and in this filing the test period cost of service includes an adjustment to amortize this amount over the 29 months of the extended lease to establish a reserve account to hold the funds until required for the dismantling and restoration.

According to Granite State, copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 11, 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 to the proceeding must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11174 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC94–3–000]

Illinois Power Co., Order Granting Authorization for Proposed Corporate Restructuring and Clarifying Jurisdiction Over Indirect Mergers of Public Utilities Owned By Public Utility Holding Companies

Issued May 3, 1994.

Introduction

This order authorizes Illinois Power Company (Illinois Power) to create a holding company, IP Holding Company (IP Holding), of which Illinois Power will become a wholly-owned subsidiary. We also take this opportunity to clarify our jurisdiction under section 203 of the Federal Power Act (FPA). While this Commission does not have jurisdiction over public utility holding company mergers or consolidations,[1] we conclude

[1] Although mergers and consolidations differ in the mechanics of the combination (mergers involve one company acquiring the other, while consolidations entail forming a new entity), Black's Law Dictionary, at 309 (Revised Sixth Ed. 1990), for ease of presentation, we will refer to both types of combinations as mergers.

that, ordinarily, when public utility holding companies merge, an indirect merger involving their public utility subsidiaries also takes place, and that our approval under section 203 is required for the indirect merger of the public utilities.

Accordingly, in this order we establish and announce a rebuttable presumption that an indirect merger of the public utility subsidiaries occurs simultaneously with the merger of the holding company parents. Therefore, prior to public utility holding companies merging, their public utility subsidiaries must either rebut the presumption or obtain our approval under section 203 of the FPA. If applicants can show us that there will not be an indirect merger or consolidation of the facilities of the public utility subsidiaries, our jurisdiction will not apply until such time as the public utility subsidiaries themselves seek to merge or consolidate.

Background

On November 15, 1993, Illinois Power submitted an application pursuant to section 203 of the Federal Power Act for authority to effect a "disposition of facilities" that would be deemed to occur as a result of a proposed corporate restructuring.[2] Illinois Power states that the proposed restructuring would be accomplished through the creation of a holding company, IP Holding, of which Illinois Power would become a subsidiary.

Illinois Power states that the proposed restructuring is intended to permit the establishment of non-utility businesses that can take advantage of new business opportunities on a timely basis without the need for prior regulatory approvals, to increase financial flexibility, to enhance managerial accountability for separate business activities, and to insulate utility ratepayers and security holders from the risks of non-utility projects. Illinois Power states that the proposed restructuring will not affect its jurisdictional facilities, rates or services.

The proposed restructuring would be accomplished as follows:

1. Illinois Power has formed a subsidiary, IP Holding, under Illinois law.

2. IP Holding, in turn, has formed a subsidiary, IP Merging Corporation (IP Merging), also an Illinois corporation.

3. Following all necessary approvals, IP Merging will merge with and into Illinois Power. In the merger, all outstanding shares of Illinois Power common stock will be converted on a share-for-share basis into IP Holding common stock by operation of law, and IP Holding will become the owner of all outstanding shares of Illinois Power common stock.[3] Illinois Power common stock will thereafter cease to be listed and traded on the stock market, and the common shares of IP Holding will be listed and traded instead.

Notice of the application was published in the **Federal Register**,[4] with comments due on or before December 8, 1993. None was filed.

Discussion

A. The Application

The Commission has held that the transfer of a public utility's common stock from its existing shareholders to a holding company constitutes a transfer of the "ownership and control" of the utility's jurisdictional facilities and is thus a "disposition of facilities" subject to Commission review and approval under section 203 of the Federal Power Act. See Central Vermont Public Service Corp., 39 FERC ¶ 61,295 (1987) (Central Vermont). Because Illinois Power's proposed restructuring would entail the transfer of the ownership of its common stock from existing shareholders to IP Holding, the restructuring is subject to the requirements of section 203.

The Commission is obligated to approve a proposed "disposition of facilities" under section 203 if it would be "consistent with the public interest."[5] In making such a determination, the Commission considers, *inter alia*: (1) The effect on utility operating costs and rate levels: (2) the contemplated accounting treatment; (3) the reasonableness of the purchase price; (4) the possibility of coercion; (5) the effect on competition; and (6) the impact on the effectiveness of regulation. *Commonwealth Edison Co.*, 36 FPC 927, 936–42 (1966), *aff'd sub nom. Utility Users League v. FPC*, 394 F.2d 16 (7th Cir.), *cert. denied*, 393 U.S. 953 (1968).

The Commission finds that Illinois Power's proposed restructuring will be compatible with each of the relevant factors. First, the proposed restructuring will have no effect on either Illinois Power's operating costs or its rate levels. The Applicant does not request a rate increase as part of its filing. Any future changes in Illinois Power's wholesale rates would be subject to Commission review and approval under section 205 of the FPA.

Second, the contemplated accounting treatment will be appropriate. The merger of Illinois Power and IP Merging will be accounted for on a "pooling of interests" basis under generally accepted accounting principles. Illinois Power's books and records will continue to be maintained in accordance with the Commission's Uniform System of Accounts.

Third, the proposed restructuring entails no "purchase price." The proposed restructuring involves the conversion of each share of Illinois Power common stock into a share of IP Holding common stock. Therefore, the proportion of each shareholder's ownership will be unchanged.

Fourth, because the proposed reorganization only involves Illinois Power and its affiliates, there is no possibility of coercion.

Fifth, because no facilities will be combined with those of any other public utility, the proposed restructuring will not have an adverse effect on competition.

Sixth, the proposed restructuring will not impair effective regulation of Illinois Power. Illinois Power's services, rates and facilities will be unaffected by the restructuring and will continue to be regulated by the Illinois Commerce Commission and by this Commission.

B. Clarification of Jurisdiction Over Indirect Mergers of Public Utilities Owned By Public Utility Holding Companies

While there is no current proposal to merge IP Holding with another public utility holding company, it is possible that in the future such a merger may take place.[6] In our view, most mergers of public utility holding companies will simultaneously involve an indirect merger of the public utility subsidiaries of such holding companies. Accordingly, we take this opportunity to announce a clarification of our jurisdiction when there is a merger of public utility holding companies. To assure that the public interest is protected when public utility holding companies merge, we will establish a rebuttable presumption that an indirect merger of jurisdictional facilities of the

[2] In support of its application Illinois Power presents information as required by section 33.2 of the Commission's regulations.

[3] IP Holding has filed an application with the Securities and Exchange Commission (SEC) for authority to acquire Illinois Power's common stock, pursuant to sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 (PUHCA).

[4] 58 FR 62,649 (1993).

[5] An applicant need not show that a positive benefit to the public will result. *See* Pacific Power & Light Company v. FPC, 111 F.2d 1014, 1016–17 (9th Cir. 1940).

[6] With the recent and projected increase of competition in the electric utility industry, mergers may become an increasingly popular tool for utilities seeking to achieve greater efficiency and become more competitive. Our decision today is necessary to ensure the continued adequacy of our merger policies in protecting the public interest.

public utility subsidiaries occurs at the time the holding company parents merge. Prior to the public utility holding companies merging, their public utility subsidiaries must file under section 203 of the FPA either sufficient information to rebut the presumption, or for Commission approval of the indirect merger of the public utilities.

The public utilities may rebut the presumption by showing that after the merger of the holding companies, the public utility subsidiaries will still effectively compete with each other. If they make such a showing, jurisdiction under 203 will not attach until such time as the public utilities themselves seek to combine.

1. The Three Step Process

Section 203(a) of the FPA provides that:

No public utility shall sell, lease or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person * * * without first having secured an order of the Commission authorizing it to do so.

The provision applies to any public utility, which section 201(e) of the FPA defines as "any person [with certain exceptions specified in section 201(e) which are not relevant here] who owns or operates facilities" for the sale of electric energy at wholesale or the transmission of electric energy in interstate commerce. Public utility holding companies, in contrast to public utilities, do not normally own such facilities.[7] Therefore, we have no jurisdiction over public utility holding companies that are not also public utilities and thus have no jurisdiction over most mergers of holding companies.

In recent years, however, some public utilities have followed a three-step process to reorganize. In "step one," a public utility forms a company and transfers ownership of all of the utility's stock to a newly created company, which becomes the parent holding company of the public utility.[8] In "step two," the public utility holding company merges with another public utility holding company. In "step three," the public utilities under the control of the single public utility holding company formally merge their facilities.

Central Vermont and *Missouri Basin Municipal Power Agency* v. *Midwest Energy Company* and *Iowa Resources*, Inc., 53 FERC ¶ 61,368 (1990), *reh'g denied*, 55 FERC ¶ 61,464 (1991) (*Missouri Basin*) describe our jurisdiction (or lack thereof) at each of the three steps. In *Central Vermont*, the Commission found jurisdiction under section 203 when a public utility establishes a holding company, because the shareholders of the public utility transfer ownership and control over jurisdictional facilities in the course of the transaction. In *Missouri Basin*, the Commission found that the merger of two public utility holding companies was subject to the SEC's jurisdiction, but not to our jurisdiction. The Commission determined that neither of the holding companies in *Missouri Basin* owned or operated FERC-jurisdictional facilities, and therefore neither holding company was a public utility under the FPA when the merger was consummated. Thus, the Commission found, the merger did not fall within the Commission's jurisdiction under section 203. The Commission stated that if, in the future, the public utility subsidiaries should merge—a "step three" transaction—Commission approval would be required.[9] The Commission later approved the merger of the affiliated public utilities.[10]

2. Reasons for Clarification

a. *The Presumption*. Our decision to adopt a presumption of indirect merger and to require the public utility subsidiaries to rebut the presumption by showing that after merger of their parents they will continue to compete with each other, is informed by the Supreme Court's decision in *Copperweld Corp.* v. *Independence Tube Corp. (Copperweld)*, 467 U.S. 752 (1984). The Court held that section 1 of the Sherman Antitrust Act, which outlaws conspiracies or combinations in restraint of trade, regards as one company a parent and subsidiary that maintain separate operations. The two cannot conspire because they do not compete in the economic sense. *Copperweld* holds that even if companies maintain separate corporate form, if they pursue a common economic interest, they no longer compete.

The Court explained:

> A parent and its wholly owned subsidiary have a complete unity of interest. Their objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousness, but one. They are not unlike a multiple team of horses drawing a vehicle under the control of a single driver. With or without a formal "agreement," the subsidiary acts for the benefit of the parent, its sole shareholder. If a parent and a subsidiary do "agree" to a course of action, there is no sudden joining of economic resources that had previously served different interests, and there is no justification for § 1 scrutiny.
>
> * * * * *
>
> [i]n reality a parent and a wholly owned subsidiary *always* have a "unity of purpose or a common design" * * * whether or not the parent keeps a tight rein over the subsidiary; the parent may assert full control at any moment if the subsidiary fails to act in the parent's best interest.

467 U.S. at 771–72 (emphasis in original; footnote deleted).

The courts have applied *Copperweld* to electric utilities and their affiliates. In *City of Mount Pleasant, Iowa* v. *Associated Electric Co-op*, 838 F.2d 268, 274–77 (8th Cir. 1988), for example, which involved municipal and cooperative utilities, the Eight Circuit held:

> Even though [affiliates] may quarrel among themselves on how to divide the spoils of their economic power, it cannot be reasonably said that they are independent sources of that power. Their power depends, and has always depended, on the cooperation among themselves. They are interdependent, not dependent.

838 F.2d at 277 (emphasis deleted).

While *Copperweld* applies to the Sherman Act, the rationale of the decision suggests that the common interest between members of an enterprise affects their standing as competitors for FPA purposes as well. While this Commission has no responsibility to enforce the antitrust

[7] Certain public utility holding companies, however, are also public utilities. *E.g.*, Cincinnati Gas and Electric Company.

[8] Illinois Power seeks Commission authorization of a "step one" transaction in this docket.

[9] 53 FERC at 62,298–99.

[10] Iowa Public Service Company, Iowa Power, Inc., and Midwest Power Systems, 60 FERC ¶ 61,048 (1992). The Commission has generally approved mergers between affiliated public utilities. See, e.g., Wisconsin Electric Power Company, 59 FPC 1196 (1977) ("while technically a merger, this action is more in the nature of an intrasystem consolidation and does not present the potential evils which are inherent in the merger of two non-affiliated systems"); Delmarva Power & Light Company, 5 FERC ¶ 61,201 (1978) ("the transaction would only simplify the corporate structure by merging these subsidiaries into the parent"); Union Electric Company, 25 FERC ¶ 61,394 (1983), reh'g denied, 26 FERC ¶ 61,184 (1984) ("the nature of the proposed transaction is essentially a consolidation of operating utilities presently under one ownership rather than the acquisition of any additional electric or gas utility"); and Kentucky Utilities Company and Old Dominion Power Company, 56 FERC ¶ 61,184 (1991) ("because Kentucky Utilities already wholly owned Old Dominion and, in effect, controls the use of Old Dominion's system, the merger will not alter Kentucky Utilities' control").

laws,[11] it must weigh competitive considerations in its merger analyses.[12]

Moreover, while *City of Mount Pleasant* involved municipal utilities suing an electric co-op (none of which were subject to our section 203 jurisdiction), at least one court has applied *Copperweld* to a jurisdictional public utility. *Rosemont Cogeneration Joint Venture* v. *Northern States Power*, 91–1 Trade Cases (CCH) ¶ 69,351 at 65,408 (D MN 1991).

The above case law supports our conclusion that when public utility holding companies merge, their public utility subsidiaries likely retain no real corporate independence. Rather, decision-making for the public utility subsidiaries appears to rest with the new holding company. The voting stock of the public utilities belongs to the shareholders of the new holding company; the new holding company board of directors presumably sets or can set corporate policy for all subsidiaries; and management of the public utility subsidiaries presumably gains access to proprietary financial and corporate information of the entire system of the new holding company. For us to assume that a merger of the public utilities occurs only when the new parent proposes to combine its subsidiaries may, in most instances, elevate corporate form over economic substance.

We therefore will presume, subject to rebuttal, that mergers between public utility holding companies also accomplish an indirect merger of their public utility subsidiaries. If the public utilities can rebut the presumption, we will find that jurisdiction will not attach until such time as the public utility subsidiaries formally merge or consolidate their facilities. If the public utilities cannot rebut the presumption, section 203 approval of the indirect merger of the public utilities will be required.[13]

b. *Rebutting the Presumption*. The Eighth Circuit in *City of Mount Pleasant* left open the possibility for courts to consider affiliates as separate enterprises for antitrust purposes. In granting summary judgment to the co-op, the panel held:

> The record bears out the defendants' claim that the cooperative organization is a single enterprise pursuing a common goal—the provision of low-cost electricity. * * * The burden [falls] therefore on the City to show specific facts which present a triable issue as to whether any of the defendants has pursued interests diverse from those of the cooperative itself. By "diverse" we mean interests that show that any two of the defendants are, or have been, actual or potential competitors, * * * or at the very least, interests which are sufficiently divergent so that a reasonable juror could conclude that the entities have not always worked together for a common cause. In the language of *Copperweld*, the City must show facts that could lead a reasonable juror to find the coordination between any two defendants to be a "joining of two independent sources of economic power previously pursuing separate interests."
> 838 F.2d at 276 (citations omitted).

Informed by the analysis in *Copperweld* and *City of Mount Pleasant*, we will require section 203 applicants, in order to rebut the presumption, to show that the new holding company will not interfere with the independence of the public utility subsidiaries, and will allow them to operate and compete with each other in the same manner as before the merger of the holding companies. In order to rebut the presumption of an indirect merger, the public utilities must show: (1) That they will continue to exercise independent decision-making authority; (2) that their proprietary, financial and corporate information will not be available to each other, either directly or indirectly; and (3) that they will compete on price and service in the same markets to the same extent they have competed in the past.[14]

The Commission Orders

(A) The disposition of the jurisdictional facilities of Illinois Power in the above-described corporate restructuring is hereby authorized subject to the following conditions:

(1) The proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application;

(2) The Commission retains authority under section 203(b) of the Federal Power Act to issue supplemental orders as appropriate;

(3) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, determinations of cost, or any other matter whatsoever now pending or which may come before this Commission;

(4) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted; and

(B) In the event IP Holding should seek to merge with another public utility holding company, the public utilities will be required to file under section 203 of the FPA evidence to rebut a presumption that such a merger would not also result in an indirect merger of the public utility subsidiaries, or alternatively for approval of an indirect merger of the public utilities.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11184 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–P

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[11] Northern Natural Gas Co. v. FPC, 399 F.2d 953, 960 (D.C. Cir. 1968), citing California v. FPC, 369 U.S. 482, 490 (1962).

[12] *See, e.g.*, Northeast Utilities Service Co. 56 FERC ¶ 61,369 at 61,998–62,011 (1991), *order on reh'g*, 58 FERC ¶ 61,070, *further order on reh'g*, 59 FERC ¶ 61,042 (1992), *remanded on other grounds*, 939 F.2d 937 (1st Cir. 1993) (*NU*).

[13] Section 203 requires approval *prior* to a merger. Therefore, the public utilities must file under section 203 evidence to rebut the presumption that an indirect merger of public utilities will occur when the holding companies merge, and/or alternatively an application for approval under section 203.

[14] We do not believe there can be competition between public utilities if they do not exercise independent decision-making or if they share information. Accordingly, elements (1) and (2) must be met. However, the fact that (1) and (2) are met in and of themselves is not sufficient to show that the affiliates will compete. Applicants therefore must submit additional evidence that they will compete with each other. For example, one indicia of competition would be that they will separately participate in competitive solicitations.

[Docket No. RP94–228–000]

Federal Energy Regulatory Commission

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet Nos. 237A and 237B and Original Sheet No. 237F with a proposed effective date of May 1, 1994.

National states that the proposed tariff sheets flow through to National's customers, in accordance with Section 21.5 of the General Terms and Conditions of its FERC Gas Tariff, the costs allocated to National in the Account No. 191 transition cost recovery filing made by Tennessee Gas Pipeline Company. In addition, National states that the filing proposes to flow through costs and refunds related to historic sales and transportation imbalances that remained outstanding after the implementation of restructuring on its system. Further, National states that the filing proposes to recover costs associated with the resolution of a gas pricing dispute with Northwest Natural Gas Company.

National also requests waiver of section 21 of the General Terms and

Conditions of its FERC Gas Tariff to the extent necessary to file to recover out-of-period adjustments to its Account No. 191 through April 1, 1995. In this regard, National states that several of its former upstream pipeline-suppliers have Account No. 191 out-of-period adjustment authority beyond the nine months provided for in Section 21 of National's tariff, and therefore, National will incur additional Account No. 191 adjustments beyond the current adjustment period.

Nationa further states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before May 11, 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. 94–11175 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. RP94–231–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on May 2, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to establish a mechanism to flow through Dakota Gasification Transition Costs billed to Panhandle by ANR Pipeline Company (ANR). Panhandle proposes that the tariff sheets submitted herewith become effective June 1, 1994.

Second Revised Sheet No. 11
Second Revised Sheet No. 12
Second Revised Sheet No. 13
First Revised Sheet No. 14
Original Sheet No. 321F
Original Sheet No. 321G
Original Sheet No. 321H

Panhandle states that on February 28, 1994, ANR filed its first quarterly filing (RP94–150–000) to initiate recovery of capacity and supply costs associated with ANR's obligations to Dakota Gasification Company. On March 30, 1994, the Commission accepted ANR's tariff sheets for filing, subject to refund and the outcome of a technical conference, permitting ANR to apply a reservation surcharge of $1.104 per Dth of MDQ applicable to ANR's Shippers as of March 1, 1994.

Panhandle states it is subject to ANR's Dakota Gasification transition cost reservation surcharge because it uses ANR's firm transportation service under Rate Schedule FTS–1 to transport gas to and from storage provided to Panhandle by ANR Storage Company under Rate Schedule X–4. These upstream services are part of the third party storage capacity that Panhandle has aggregated with its own pipeline storage to provide the Market Area storage services under Rate Schedules WS, PS, FS and IWS pursuant to Panhandle's restructured First Revised Volume No. 1 Tariff and as approved in Docket Nos. RS92–22–000, et al. Panhandle states that it will pay ANR $68,011 in Dakota Gasification reservation surcharges for the three months, commencing March 1, 1994.

Panhandle states that the mechanism to flow through the Dakota Gasification transition costs is contained in new Section 18.11 of the General Terms and Conditions. Section 18.11 provides that Panhandle will file quarterly to establish a surcharge to flow through the Dakota Gasification transition costs for the three months preceding the effective date of the surcharge. The surcharge will be applied to the deliverability charge for Panhandle's firm Market Area storage services under Rate Schedules WS, PS and FS, and to the monthly inventory charge for Panhandle's interruptible Market Area storage service under Rate Schedule IWS. Panhandle proposes to establish a deferred account to record differences between the Dakota Gasification transition costs Panhandle pays to ANR and its monthly recoveries with carrying charges on these differences and to file annually to flow through the deferred account activity to "true-up" recoveries with Panhandle's actual costs.

Panhandle requests that the Commission grant all necessary waivers of the Regulations so as to place the instant tariff sheets and attendant surcharge into effect on June 1, 1994.

Panhandle states that a copy of this tariff filing is being served on all affected customers and state commissions.

Any person desiring to be heard or to protest the said filing should file a motion to intervene or a 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 protest should be filed on or before May 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 94–11173 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–222–000]

Tennessee Gas Pipeline Company; Petition for Declaratory Order

May 4, 1994.

Take notice that on April 29, 1994, Tennessee Gas Pipeline Company (Tennessee) filed a petition for declaratory order seeking Commission approval of a settlement agreement Tennessee recently entered into with Dakota Gasification Company (Dakota) and the United States of America on behalf of the Department of Energy with respect to Tennessee's purchase of synthetic gas produced from the Great Plains Gasification Plant and Dakota's transportation of such gas for Tennessee.

Tennessee seeks a declaratory order from the Commission that:

(a) Approves the settlement and finds that it is in the public interest;

(b) Waives or amends Opinion No. 119, 15 FERC ¶ 61,106 (1981), as necessary to permit the settlement's pricing provisions to be implemented; and

(c) Authorizes Tennessee to recover the costs incurred under the settlement under a special component of the GSR cost recovery procedures in effect from time to time in Tennessee's FERC Gas Tariff.

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 11, 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. 94–11179 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–225–000]

Texas Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets:

FERC Gas Tariff

First Revised Volume No. 1

Fifth Revised Sheet No. 10
Seventh Revised Sheet No. 12
Third Revised Sheet No. 18

FPC Gas Tariff

Original Volume No. 2

Seventeenth Revised Sheet No. 82
Eighteenth Revised Sheet No. 547
Twentieth Revised Sheet No. 982
Eighteenth Revised Sheet No. 1005
Twelfth Revised Sheet No. 1085.

Texas Gas states that the revised tariff sheets are being filed pursuant to § 33.3 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to recover ninety percent (90%) of its Gas Supply Realignment costs from its firm transportation customers and ten percent (10%) of its Gas Supply Realignment Costs from its IT customers. Texas Gas states that the total GSR costs proposed to be recovered by this filing are $21,709,900.

Texas Gas requests an effective date of June 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 11, 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. 94–11178 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–227–000]

Transwestern Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, Transwestern Pipeline Company (Transwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective June 1, 1994:

108th Revised Sheet No. 5
14th Revised Sheet No. 5A
6th Revised Sheet No. 5A.02
6th Revised Sheet No. 5A.03
12th Revised Sheet No. 5B
Original Sheet No. 5N
11th Revised Sheet No. 48
2nd Revised Sheet No. 83
1st Revised Sheet No. 84
9th Revised Sheet No. 87

Transwestern states that the purpose of the filing is to implement a Purchase Gas Adjustment Alternative Rate Recovery Mechanism to enable it to collect $10.7 million in unrecovered purchased gas costs (including interest) through a reservation surcharge.

Transwestern states that copies of the filing were served upon Transwestern's gas utility 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 20246, 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 11, 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. 94–11176 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–226–000]

Viking Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 1994.

Take notice that on April 29, 1994, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective November 1, 1993:

Second Revised Sheet No. 34
Second Revised Sheet No. 35

Viking states that the purpose of this filing is to amend Section 6(a)(ii) of the monthly imbalance cash out mechanism under Rate Schedule LMS in two respects.

Viking states that this section currently provides that in calculating cash outs, "[t]he 'Transportation Component' shall be equal to the commodity rate under Rate Schedule FT–A for transportation to the applicable zone multiplied by the monthly imbalance, plus any applicable fuel an use charges."

Viking's Rate Schedule FT–A has a two-part rate, with a fixed cost reservation charge and a variable cost volumetric charge. Viking's other services, however, under Rate Schedules FT–GS, IT and AOT, have a one-part volumetric rate that recovers both fixed and variable costs.

Consequently, a mismatch may occur if the FT–A commodity charge is used in calculating monthly cash outs for service under Rate Schedules FT–GS, IT or AOT.

To cure this potential problem, Viking proposes to amend this section to provide that [t]he 'Transportation Component' shall be equal to the commodity rate under the applicable rate schedule for transportation to the applicable zone multiplied by the monthly imbalance, plus any applicable fuel and use charges."

The second proposed change concerns the calculation of the published Index Price under the monthly cash out mechanism. The Index Price is based on an "Average

Monthly Index Price," which is an average of the Weekly Index Prices for the month. The Weekly Index Price equals the price of gas delivered to Transporter at Emerson, Manitoba as published in the "Weekly Price Survey" of Gas Daily.

Section 6(a)(ii), however, does not address the situation of how to calculate the Average Monthly Index Price in the event Gas Daily does not include in its Weekly Price Survey a price for gas delivered to Viking at Emerson, Manitoba for any of the weeks in the month because of an insufficient number of transactions. This, in fact, occurred in December, 1993.

To remedy this situation, Viking proposes to amend Section 6(a)(ii) by including the following language:

If none of the Gas Daily "Weekly Price Surveys" for a given month include a price for gas delivered to Transporter at Emerson, Manitoba ("Weekly Emerson Price"), the "Average Monthly Price Index" for such month shall be the average of: (1) the last Weekly Emerson Price published by Gas Daily preceding that month; and (2) the first Weekly Emerson Price published by Gas Daily following that month.

Viking proposes an effective date of November 1, 1993, for the proposed changes to section 6(a)(ii), and hereby requests such waivers as are necessary to permit the changes to become effective on that date.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 11, 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. 94–11177 Filed 5–9–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

Appliance and Equipment Energy Efficiency and Water Standards: Public Meeting To Discuss Recommendations for Establishing State and Local Incentive Programs for Voluntary Replacement of Plumbing Products by Consumers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The Energy Policy Act of 1992 requires the Department of Energy (DOE or Department) to issue recommendations to the States for establishing State and local incentive programs designed to encourage the acceleration of voluntary replacement, by consumers, of existing showerheads, faucets, water closets, and urinals with those products that meet the standards established in the legislation.

In order to consult with government and industry representatives about the development of such recommendations, the Department will hold a public meeting in New York City to solicit ideas and plan a future workshop. All persons are hereby given notice of the opportunity to submit written comments and/or attend the public meeting.

DATES: Written comments on the agenda items listed in this notice should be submitted in quadruplicate by June 9, 1994. Individuals who wish to participate in the discussion meeting should let the Department know before June 13, 1994. The public meeting will be held on Monday, June 20, 1994.

ADDRESSES: Written comments and requests to participate should be labeled "Incentive Programs for Voluntary Replacement of Plumbing Products" and submitted to Ms. Sandy Cooper, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585. Telephone: (202) 586–9127; FAX: (202) 586–4617.

The meeting will begin at 12:30 p.m. and will be held in room 551 at the New York Hilton & Towers, 1335 Avenue of the Americas, New York City, New York, in conjunction with the annual conference of the American Water Works Association.

Copies of the public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC (202) 586–6020 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

1. Authority

The Energy Policy Act of 1992 (EPACT; Pub. L. 102–486) identifies several new categories of products and equipment for inclusion in a range of required and voluntary testing and information programs to promote energy efficiency and conserve water. Section 123 of EPACT establishes maximum water use standards for showerheads, faucets, water closets and urinals for equipment manufactured after January 1, 1994. In addition, Section 123 requires the Secretary of Energy to issue recommendations to the States for establishing State and local incentive programs designed to encourage the acceleration of voluntary replacement, by consumers, of existing showerheads, faucets, water closets, and urinals with those products that meet the new standards. In developing the recommendations, the Secretary is required to consult with the heads of other Federal agencies, including the Administrator of the Environmental Protection Agency; State officials; manufacturers, suppliers, and installers of plumbing products and other interested parties.

2. Background

The June 20, 1994, meeting is designed to be a planning session for a future workshop. The Department would like to receive suggestions on how that workshop can be effectively organized to elicit both broad participation and coverage of all pertinent issues regarding State and local incentive programs. Working committees will be established.

3. Discussion

Agenda items for the planning session will include the following:

• Identification of key issues and barriers confronting those working on existing water efficiency programs.

• Identification of participants to include in the future workshop, ensuring a broad base of interests and issues.

• Determination of a prospective date, format, and location for the larger workshop.

• Establishment of volunteer committees to assist workshop planning.

4. Public Meeting Procedure

The primary focus of the meeting will be to determine the proper vehicle for a future, more in depth workshop. DOE will make a presentation at the beginning of the meeting to provide an overview of legislative requirements and current Federal activities. Although subsequent discussion among participants will be informal, a professional facilitator will be used to focus on pertinent topics and achieve the goals of the meeting.

Issued in Washington, DC, May 3, 1994.

Frank M. Stewart, Jr.,

Acting Chief of Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 94–11265 Filed 5–9–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[Docket No. FE C&E 94–6—Certification Notice—133]

Wallkill Generating Company, L.P., Notice of Filing of Coal Capability, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: On April 28, 1994, Wallkill Generating Company, L.P. submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of April 28, 1994. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: Wallkill Generating Company, L.P., Bethesda, Maryland
Operator: U.S. Operating Services Company, Rockville, Maryland
Location: Wallkill, New York
Plant Configuration: Topping Cycle, Combined Cycle
Capacity: 95.1 megawatts
Fuel: Natural gas
Purchasing Utilities: Orange and Rockland Utilities, Inc.
In-Service Date: Fourth quarter of 1995

Issued in Washington, DC, May 3, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–11264 Filed 5–9–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4881–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1672.01; Request for Information for Bioremediation Field Initiative Database Systems; was approved 04/12/94; OMB No. 2080–0048; expires 04/30/97.

EPA ICR No. 1632.01; Containment Structure Regulations; was approved 04/12/94; OMB No. 2070–0133; expires 04/30/97. This collection supports the proposed rule.

EPA ICR No. 0010.07; Information Requirements for Importation of Nonconforming Vehicles; was approved 04/01/94; OMB No. 2060–0095; expires 03/31/97.

EPA ICR No. 1680.01; Combined Sewer Overflow Policy; was approved 04/05/94; OMB No. 2040–0170; expires 04/30/97.

EPA ICR No. 1643.01; Approval and Delegation of Federal Air Toxics Programs under 112(1)(2), Application Requirements; was approved 07/21/93; OMB No. 2060–0264; expires 07/31/96.

EPA ICR No. 1353.04; Hazardous Waste Management System: Land Disposal Restrictions "No-Migration" Variances; was approved 04/14/94; OMB No. 2050–0062; expires 04/30/97.

EPA ICR No. 1666.01; NESHAP for Ethylene Oxide Commercial Sterilization and Fumigation Operations, Reporting and Recordkeeping Requirements—Part 63, Subpart 0; was approved 04/18/94; OMB No. 2060–0283; expires 04/30/97.

OMB Disapprovals

EPA ICR No. 1631.01; Container Design and Residue Removal; was disapproved 04/12/94. This collection supports the proposed rule.

EPA ICR No. 1659.01; NESHAP for Source Categories: Stage 1 Gasoline Distribution: Monitoring, Reporting and Recordkeeping; was disapproved 04/11/94.

EPA ICR No. 0270.31; Information Collection Requirements Rule: Cryptosporidium, Giardia, Viruses, Disinfection by-Products, and other Information Requirements; was disapproved 04/06/94.

OMB Extension of Expiration Dates

EPA ICR No. 1198.03; Chemical Specific Rules, Section 8(A); OMB No. 2070–0067; expiration date was extended to 10/31/94.

EPA ICR No. 1425.02; Application for Reimbursement to Local Governments; OMB No. 2050–0077; expiration date was extended to 10/31/94.

Dated: May 3, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–11277 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

Science Advisory Board

[FRL-4883-6]

Notification of Public Advisory Committee Meetings; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. Environmental Economics Advisory Committee

The Environmental Economics Advisory Committee (EEAC) of the SAB will meet on May 31, 1994, at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria VA 22314. The hotel telephone number is (703) 684-5900.

The meeting, which is open to the public, will start at 8:45 AM, and adjourn no later than 5:00 PM. Its main purpose is to: (a) Receive briefings on economic issues and analytic activities in the Offices of Air and Radiation, Pesticides, and Toxic Substances, and the Office of Environmental Equity; (b) receive a briefing on, and discuss, the collection of pollution control cost data by the Department of Commerce's Bureau of Economic Analysis; (c) review economic issues in the draft reports prepared by other SAB Committees as part of the SAB Futures project, and (d) discuss possible future review topics.

Members of the public desiring additional information about the conduct of the meeting should contact Mr. Samuel Rondberg, Designated Federal Official, Environmental Economics Advisory Committee, by telephone at (202) 260-2559, via Internet to RONDBERG. SAMUEL EPAMAIL.EPA.GOV, or by mail to him at: U.S. Environmental Protection Agency (1400F), 401 M Street, S.W., Washington D.C. 20460.

Anyone wishing to make a presentation at the meeting should forward a written statement (35 copies) to Mr. Rondberg by May 24, 1994. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

2. Subcommittee on Ecological and Economic Sustainability

On June 1, 1994, the Subcommittee on Ecological and Economic Sustainability, a joint subcommittee of the Ecological Processes and Effects Committee and the Environmental Economics Advisory Committee of the SAB, will meet at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314 (at the King Street Metrorail Stop). The hotel telephone number is (703) 684-5900. The meeting will begin at 8:00 a.m. and end no later than 5:00 p.m. The Subcommittee will review the Agency's project entitled "Assessing the Sustainability of Ecological and Economic Systems." The project involves the development of an integrated economic-ecosystem model to illustrate how humans intervene in an ecosystem and how different ecosystem configurations contribute to human welfare and sustainability. The initial research is focused on the development of a pilot model for the Patuxent Watershed in Maryland.

To obtain a draft meeting agenda, please contact Ms. Dorothy Clark, SAB Staff Secretary, at (202) 260-6552 or Internet address Clark.Dorothy@EPAMAIL.EPA.GOV. Single copies of the review materials provided to the Subcommittee may be obtained from Ms. Evangeline Iverson, EPA Office of Policy, Planning, and Evaluation (mail code 2127), 401 M Street, SW, Washington, DC 20460, telephone (202) 260-3354. Anyone wishing to make a brief oral presentation at the meeting must notify Stephanie Sanzone, Designated Federal Official for the Subcommittee, at (202) 260-6557 and forward twenty copies of a written statement to her no later than May 24, 1994. Oral comments to the Subcommittee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

Dated: April 26, 1994.

Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94-11276 Filed 5-9-94; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66192; FRL 4774-2]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by August 8, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 36 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000004–00196	Bonide Benomyl 50% Wp	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000070–00117	Kill-Ko New Improved Roach and Ant Killer	*o*-Isopropoxyphenyl methylcarbamate 2,2-Dichlorovinyl dimethyl phosphate
000100–00627	Dual 15g Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100–00677	Duet Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000352–00443	Dupont Gemini Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoic acid,
000352 WA–90–0018	Dupont Lorox L Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
000400 AZ–89–0017	B-Nine Sp	Butanedioic acid mono(2,2-dimethylhydrazide)
000707–00102	Dithane M-45 Concentrate Agricultural Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product
000769–00744	AFC Pivalyl Concentrate - Anti-Coagulant Rat and Mouse	2-Pivalyl-1,3-indandione
000769–00745	Rodenticide, Bait, Anticoagulant Pivalyl	2-Pivalyl-1,3-indandione
000769–00751	Rodenticide, anticoagulant, univ Cntrl of Common Rats & Mouse	2-Pivalyl-1,3-indandione
000769–00759	Rodenticide, Anticoagulant, 0.5% Pival	2-Pivalyl-1,3-indandione
000813–00013	Dixichlor Special	Sodium hypochlorite
000875–00151	Oxford Kilz-M	*o*-Isopropoxyphenyl methylcarbamate *N*-Octyl bicycloheptene dicarboximide Pyrethrins
001021–01516	Evercide Concentrate 2357	*d*-cis-trans-Allethrin *N*-Octyl bicycloheptene dicarboximide 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
001677–00053	Trichlor-O-Cide Formula XP-100	Sodium dichloroisocyanurate dihydrate
001812–00241	Super-Cu Copper Fungicide	Basic copper sulfate (Declare copper equivalent)
001812 LA–90–0007	Kocide Sd Seed Dressing Agricultural Fungicide	Copper hydroxide
003125 NC–80–0019	Furadan 4 Flowable	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
003125 NC–82–0031	Furadan 4 Flowable	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
003125 OH–81–0033	Furadan 4 Flowable	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
003125 OH–82–0015	Furadan 4 Flowable	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
005481–00267	Royal Brand Peanut Dust	Basic copper sulfate (Declare copper equivalent) Sulfur
006199–00004	PDIC (potassium Dichloro Iso Cyanurate) Granular 59%	Potassium dichloro-*s*-triazinetrione
007173 VT–76–0002	Rozol Tracking Powder	2-((*p*-Chlorophenyl)phenylacetyl)-1,3-indandione
010182–00013	Granular P.D.I.C. (Potassium Dichloroisocya	Potassium dichloro-*s*-triazinetrione
010279–00001	Betadine Whirlpool Concentrate	Polyvinylpyrrolidone - iodine complex
010445–00029	Metasol J-26 Liquid	*N*-(.alpha.-(Nitroethyl)benzyl)ethylenediamine, potassium salt
010445–00052	H-700 Microbiocide	*N*-(.alpha.-(Nitroethyl)benzyl)ethylenediamine, potassium salt
010806–00098	Contact Liquid Ant & Roach Killer III	*d*-trans-Chrysanthemum monocarboxylic acid ester of *d*-2-allyl-4-hydroxy-3- *o*-Isopropoxyphenyl methylcarbamate *N*-Octyl bicycloheptene dicarboximide
010867–00006	Algae-Trol R	Copper citrate
014775–00018	Diazinon AG 50 Insecticide	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
035138–00064	Aerochem Roach & Ant Spray	(3-Phenoxyphenyl)methyl *d*-cis and trans* 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
037425–00005	Adams Anti-Crawl	*o*-Isopropoxyphenyl methylcarbamate *N*-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Pyrethrins
045639–00007	Norton Granule	2-Ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate, (+-)-
055272–00001	Oxycop WP	Basic copper chloride

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000400	Uniroyal Chemical Co Inc., 74 Amity Rd, Bethany, CT 06524.
000707	Rohm & Haas Co, Agri Chemicals Registration & Regulatory, 100 Independence Mall W., Philadelphia, PA 19106.
000769	Sureco Inc., c/o H.R. McLane, Inc., 7210 Red Rd., Suite 206, Miami, FL 33143.
000813	DPC Industries, Inc., 300 Jackson Hill, Houston, TX 77007.
000875	Diversey Corp., 12025 Tech Center Dr, Livonia, MI 48150.
001021	McLaughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427.
001677	Ecolab Inc., 370 Wabasha St., Ecolab Center, St Paul, MN 55102.
001812	Griffin Corp., Box 1847, Valdosta, GA 31603.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
005481	Amvac Chemical Corp., 4100 E. Washington Blvd, Los Angeles, CA 90023.
006199	Zeneca Inc., 1800 Concord Pike, Wilmington, DE 19897.
007173	Liphatech, Inc., 3101 W. Custer Ave, Milwaukee, WI 53209.
010182	Zeneca Inc., 1800 Concord Pike, Wilmington, DE 19897.
010279	Purdue Frederick Co., 100 Connecticut Ave., Norwalk, CT 06856.
010445	Calgon Corp., Calgon Center - Box 1346, Pittsburgh, PA 15230.
010806	Contact Industries Inc., 641 Dowd Ave., Elizabeth, NJ 07201.
010867	Water Services, Inc., Box 22339, Knoxville, TN 37933.
014775	Asgrow Florida Co, 4144 Hwy., 39 N. Plant City, FL 33565.
035138	Aerochem, Inc., 1396 Lee Lane, Raymond, MS 39154.
037425	Smithkline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19380.
045639	Nor-Am Chemical Co, Little Falls Centre One, 2711 Centerville Rd, Wilmington, DE 19808.
055272	Paragon Global Services, Agent For: Ingenieria Industrial Sa De C, Box 5126, Valdosta, GA 31603.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before August 8, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific

disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: April 20, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–11199 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34056; FRL 4774–3]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on August 8, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request. The requests included in this notice were received in response to the Worker Protection Standard (WPS), and are intended to remove the products from the scope of the WPS.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 253 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before August 8, 1994 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Delete from Label
000004–00017	Bonide 1.00 % Rotenone	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00062	Bonide Sulphur Plant Fungicide Micronized Spray or Dust	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00099	Malathion 50% EC	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00143	Bonide Sevin 5% Dust Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00146	Crabgrass Preventer & Weed Killer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00180	Bonide Lawn Disease Control	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00252	Bonide Dipel .86% W.P. Home & Garden Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00290	Bonide Turf, Garden & Ornamental Fungicide 50% WP	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00296	Bonide Turf & Ornamental Herbicide 75% W.P.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00300	Bonide Garden Turf and Ornamental Herbicide 5G	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00309	Bonide Rose, Flower, & Ornamental Ready-To-Use Insect	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00315	Bonide Liquid Rotenone/pyrethrins Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
000004–00319	Bonide Home Pest Control Concentrate	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00334	Bonide Slug and Snail Beater	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00340	Bonide Tobacco Dust	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00350	Bonide Insect Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00352	Bonide Last Slime Slug-N-Snail Beater	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000004–00355	Bonide Home Orchard Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000070–00113	Kill-Ko Cygon 2-E Systemic Insecticide	Aerial application
000070–00126	Kill-Ko Thiodan 4 Dust	Cotton, tobacco
000070–00142	Kill-Ko Thiodan Emulsifiable Insecticide	Tobacco
000264–00396	Weedone DPC Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000270–00261	Farnam Natural Bug Guard Mist A	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03062	Dragnet FT Termiticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03070	Cynoff WP Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03081	Cynoff EC Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03085	Cynoff WSB Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03092	Flee Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03109	Cynoff 50 WP Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000279–03117	Cynoff 50 WSB Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00452	Sbp-1382 Insecticide Aqueous Pressurized Spray 0.25%	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00454	Your Brand SBP-1382 Aqueous Pressurized Spray Insect	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00455	SBP-1382 Pressurized Spray Insecticide 0.25%	Tent caterpillars
000432–00482	SBP-1382/bioallethrin Aqueous Pressurized Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00505	24.3% SBP-1382–2 E.C.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00517	SBP-1382 0.35% Space and Residual Aqueous Pressurized	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00536	SBP-1382/bioallethrin Aqueous Pressurized Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00543	SBP-1382 Insecticide Transparent Emulsion Spray 0.35%	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00544	Ultratec Insecticide W/SPB-1382 Tran. Emul. Dil. Conc.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00548	SBP-1382 Insecticide Transparent Emulsion Spray 0.25%	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00582	Bioram 0.15% + 0.25% Insect. Aqueous Pressurized Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
000432–00585	Bioram 0.2% + 0.2% Insect. Aqueous Pressurized Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00592	Pramex 0.25% Aqueous Pressurized Spray for House	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00593	SBP-1382/bioallethrin (0.2 + 0.4) II Professional	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00626	SBP-1382/esbiothrin/P.B.O Insecticide Aq. Press Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00627	SBP-1382/esbiothrin/P.B.O. Insecticide Aq. Press. Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000432–00631	SBP-1382/esbiothrin/P.B.O. Insecticide Aq. Press. Spray	Greenhouses, lathhouses, plants being grown for sale or other commercial use, commercial seed production, or research purposes
000524–00456	Dimension 0.25G Turf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000498–00144	Spray Pak Flying and Crawling Insect Killer Formula 2	Nurseries, seed houses
000538–00026	Scotts Proturf Weedgrass Preventer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00075	Scotts Proturf 16–21–5 Starter Fertilizer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00088	Proturf Systemic Fungicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00103	Proturf Fungicide II	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00108	Proturf FFII	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00111	Proturf Insecticide III	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00112	Scotts Proturf New K-O-G Weed Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00159	Proturf Fungicide VI	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00161	Proturf Fungicide 7	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00162	Proturf Insecticide 4	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00164	Proturf Goosegrass/crabgrass Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00196	Proturf Fertilizer Plus Turf Weedgrass Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00203	Proturf Fluid Fungicide II	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00206	Proturf Fertilizer Plus Southern Turf Weedgrass Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00216	Proturf Fluid Fungicide III	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00226	Fertilizer Plus Insecticide/preemergent Weed Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00230	High K Fertilizer with Tgr Poa Annua Control	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000538–00239	TGR (r) Turf Enhancer 50 WP	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00241	14–21–10 Turf Starter Plus Preemergent Weed Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000538–00242	Fungicide IX	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
000572–00200	Rockland Garden Clean with Trifluralin	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
000572–00219	Rockland Super Professional Dursban Chinch Bug Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000572–00273	Rockland Three-Wav Lawn Weed Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000572–00292	Rockland 5% Diazinon Granular Lawn Insecticide	Turf being grown for sale or other commercical use as sod, or for commercial seed production, or for research purposes
000655–00683	Prentox Pyronyl Oil Concentrate #15A	Mushrooms
000655–00684	Prentox Pyronyl Oil Concentrate #15	Mushrooms
000746–00125	Dursban Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000802–00560	Lilly/miller 1% Chlorban Insect Granules	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
000802–00576	Lilly/miller Ultragreen Crabgrass Control & Lawn Food	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
001109–00036	Tri-Basic Copper Fungicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
001381–00145	4 LG	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
002217–00426	Formec 80 Turf & Ornamental Fungicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
002217–00682	Norosac 4G Dichlobenil Granules	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
002217–00692	Gordon's Professional Turf Products Teremec SP Turf	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
002548–00027	Max Kill Malathion 57-WE	Vegetables, fruits, nuts, field crops, pastures, range grasses, stored products, fly/mosquite control, outdoor ornamentals, forest trees, around the home, around cull fruit/vegetable dumps, around wineries, non-food areas of processing plants
003125–00083	Di-Syston 2% Granular	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125–00116	Di-Syston Systemic Insecticide Granules	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125–00126	Di-Syston Systemic Insecticide for Vegetables	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125–00152	Systemic 2 In 1 Rose Care 10–10–10 Rose Food	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125–00318	Bayleton 25% Wettable Powder	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003125–00331	Oftanol 1.5% Granular	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003772–00013	Earl May Sevin Wettable Powder	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003772–00043	Dipel Bio Garden Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
003862–00078	Kamikaze	Mushroom production & processing
004816–00442	Multi-Purpose Pyrenone Insecticide Concentrate	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00470	Tetralate Multi-Purpose Insecticide S.E.C.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00496	Pyrenone Flexi-Dust	Vegetable, ornamental plants
004816–00537	Pyrenone Dursban Dual Use E.C.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00607	Pyrenone Aqueous 30–3	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
004816–00690	Permanone Multi-Use Insecticide Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00706	Pyrenone 25–2.5 W.P.	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00709	Permanone General Purpose Aqueous Insecticide II	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
004816–00714	Permanone Multi-Purpose 0.25% Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
006133–00013	Surge 25–3–9 Turf Fertilizer with Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
008378–00020	Shaw's 18–5–9 Turf Food with XL Crabgrass Control	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
008590–00556	Dursban 4E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
008590–00582	Agway Dipel 4L	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00008	Weed n' Feed 10–6–4	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00016	Frank S Garden King Weed and Feed	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00026	Turf Care for Professional Lawn Maintenance W/1.2%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00030	Turf Care for Professional Lawn Maintenance 20–4–10	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00031	Turf Care Fertilizer 18–3–5 with Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00032	Turf Care for Lawn Maintenance 38–0–0 with Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00037	Tee Time Fertilizer 20–4–10 with Benefin/Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00039	Turf Care Dursban 2.5G	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00040	Fortify Premium Crabgrass Preventer & Plant Food 18-4-1	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00043	Turf Care for Southern Lawns 0.47% Chloropyrifos	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00044	Turf Care Granular Lawn Insect Control Plus Lawn Food X	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00045	Turf Care Granular Lawn Insect Control Plus Lawn Food	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00046	Andersons Weed and Feed XX-XX-XX	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00047	Andersons Weed Killer 0.84% 2.4-D and 0.84% MCPP	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00048	Andersons Weed Killer 0.63% 2.4-D and 0.60% MCPP	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00049	Andersons Weed and Feed XX-XX-XX	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00050	Anderson's Pre-Emergent Crabgrass Killer Plus Fertil.	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00051	Andersons "Two In One" Lawn Food Plus Crabgrass Prevent	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00052	Andersons Crabgrass Preventer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
009198–00053	Anderson's Weed and Feed III 28–3–9	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00054	Anderson's Weed and Feed II 28–3–9	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00055	Anderson's Weed and Feed 20–6–10 contains 2,4-D	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00056	Pel-Tech Benefin Concentrate 10	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00057	Pel-Tech Benefin Concentrate 15	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00058	Pel-Tech Benefin Concentrate 20	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00059	Pel-Tech Benefin Concentrate 25	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00060	Easy Weeder Flower and Garden Weed Preventer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00061	Turf Care Lawn Insecticide 2% Diazinon	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00062	Turf Care Lawn and Garden Insecticide 5% Diazinon	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00064	Loft's Lawn Fungicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00065	Lofts Crabgrass Preventer with Tupersan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00066	Lofts Crabgrass Preventer Plus Lawn Food 25–3–3	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00067	K-Mart Crabgrass Preventer 25–3–3 with Benefin	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00068	The Andersons 1% Dursban Brand Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00070	Green Thumb Weed & Feed 12–3–5	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00072	Custom Mix 20–4–10 with Betasan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00073	Custom Mix 25–6–10 with Betasan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00075	Tee Time Fertilizer 20–4–10 with Ronstar	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00076	Andersons Tee Time 32–3–5 with Offanol	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00077	Tee Time Sprayable Herbicide with Team	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00078	Tee Time Sprayable Herbicide II with Team	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00079	Anderson Tee Time 25–3–8 Plus Team	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00080	Anderson Tee Time 20–4–10 with 1.04 Balan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00081	Tee Time Fertilizer 20–4–10 with 1.15 Balan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00082	Tee Time Fertilizer with 0.52% Dursban 30–3–5	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00083	Anderson Tee Time 2.5 Balan Crabgrass Preventer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00084	Andersons Tee Time 30–3–5 with 0.65% Dursban	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
009198–00085	Tee Time Fertilizer with 0.71% Dursban 30–3–5	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00086	Anderson Pre-Emergence Crabgrass Preventer with Balan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00088	Anderson's Tee Time with 1.5% Oftanol	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00089	Tee Time 5–10–30 with Balan and Surflan	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00090	Tee Time 5–10–30 with Balan and Surflan Formula I	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00091	Andersons Tee Time 25–3–8 Plus Team	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00092	Greensweep Spray-On Liquid Weed & Feed for Southern	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00093	Greensweep Spray-On Liquid Weed & Feed for Northern	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00094	Andersons Tee Time 20–4–10 Plus Team	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00098	Anderson's Tee Time 25–3–8 with Team/dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00099	Andersons Tee Time 19–5–9 with Team/dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00100	The Andersons Tee Time Insecticide with Dylox	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00101	The Andersons Tee-Time 25–3–8 Plus 0.87% Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00102	The Andersons Tee Time 25–3–8 with 0.87% Team/ 0.58%	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00106	The Andersons Tee Time Fertilizer with Sevin (r)	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00108	The Anderson's Tee Time Lawn Food with Crabgrass Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00110	The Andersons Tee Time Insecticide with 6.2 Dylox	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00111	The Anderson's Tee Time with 1.0% Bayleton Fungicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00112	The Anderson Tee Time With 0.5% Bayleton Fungicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00115	Granular Turf Fungicide contains Daconil-2787	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
009198–00116	Twin Light Granular Lawn Insecticide with Dursban	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00117	The Andersons Dimension Herbicide IV	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00119	The Andersons Turcam Insecticide II	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00120	The Andersons Dimension Herbicide II	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00121	The Andersons Dimension Herbicide III	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
009198–00122	The Andersons Turcam Insecticide I	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00032	Foam spray Products Sevin* General Outdoor Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
010370–00036	Ford's Dursban 1/2 G Granular Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00037	Ford's Dursban 2E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00047	Ford's Lawn Granules	Fieldcorn, popcorn, sweet corn, peanuts and plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00048	Ford's Lawn & Ornamental Spray	Cherries, citrus fruit, field corn, sweet corn, popcorn, nectarines, peaches, peanuts, sunflowers, sugar beets, tree fruits and plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00054	Ford's Dursban 2.5% G Granular Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010370–00058	Ford's Malathion 57%	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00064	Ford's Dursban 1-E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00115	Sevin-5 Dust	Beans, cotton, application by aircraft and plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00121	Ford's Snail and Bug Bait	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00129	Sevin 10 Dust	Beans, cotton, application by aircraft and plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00147	Ford's 50% Malathion Emulsifiable Concentrate	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00152	Ford's 5% Sevin Bait	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00169	Ford's Crabgrass and Foxtail Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010370–00202	Lawn Fungicide Granules	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010370–00207	Organicide Dip	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00212	Forty-Nine Plus (permethrin)	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00285	Clean Crop Sevin Brand Carbaryl Insecticide Liquid 11.7	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010370–00293	Best Rose & Ornamental Plant Food with Systemic Insect	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00001	Lescopex Clover-Chickweed Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00006	Lakeshore 18–5–9 Turf Fertilizer with Balan	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00007	Lesco 12–4–8 Weed & Feed for Lawn Weed Control	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00010	Lesco Thiram 75W	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00011	Lesco Diazinon 500	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00013	Super Lescopex	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00014	Lesco 30–5–7 Plus Diazinon	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00015	Lesco 2.32 Granular Insecticide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
010404–00021	Lesco A-4d Herbicide 2,4-D Amine	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00023	Lesco Diazinon 5g	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00027	Lesco 40–0–0 Fertilizer with Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00028	Lesco 39–0–0 Fertilizer with Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00029	Lesco 32–5–7 Fertilizer with Dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00031	Lescosan 4-E Selective Herbicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00032	Lescosan 7-G	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00036	Lesco 2.5 Benefin Granular	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00037	Lesco Pcnb & Fertilizer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00038	Lesco Pcnb-10% Granular Soil Fungicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00039	Lesco Fertilizer & Atrazine 22–5–7 + Fe+mn	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00040	Lesco 20–0–10 Fertilizer w/dursban	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00043	Lesco Three-Way Selective Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00044	Lesco Bentgrass Selective Broadleaf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00045	Lesco 24–4–12 Fertilizer with 1.5% Oftanol	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00047	Lesco Oftanol 1.5% Granular	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00056	Lesco Turf Fertilizer with 1.15% Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00057	Lesco Turf Fertilizer with 1.25% Team	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00058	Lesco Granular Turf Fungicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00059	Lesco Tfc Dispersible Granule Turf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
010404–00060	Lesco Two-Some Flowable Fungicide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
010404–00061	Lesco 6.3% Sevin (r) Brand Granular Carbaryl Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
011474–00003	No-Crab Crabgrass Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
011474–00004	Select-Kil High Concentrate	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
011474–00013	Over Grass & Weed Killer	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
011474–00026	Sungro Treat-Turf Herbicide	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes
011474–00030	Sunbugger Water Base Insecticide Spray	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
011474–00067	Sungro Permith with Permanone	Plants being grown for sale or other commercial use, commercial seed production, or research purposes

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete from Label
011474–00068	Sunbugger 8	Not for use on agricultural establishments in hopper- box, planter-box, slurry-box, or other seed-treatment applications at or immediately before planting
011474–00071	Perm II	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
011540–00001	ULD BP-300 Insecticide	Mushroom houses, mushroom production
011540–00009	ULD BP-100 Insecticide	Mushroom houses, mushroom production
011540–00013	ULD BP-50 Insecticide	Mushroom houses, mushroom production
011540–00018	ULD BP-5025 Insecticide	Mushroom houses, mushroom production
028293–00210	Dursban 1-E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802–00007	All Season Balan Granular 2.5g	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802–00011	Benefin 1.3% Plus	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
032802–00019	Dursban Insecticide 0.7 Plus 16–3–5 Fertilizer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00065	Chlorpyrifos 2E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00066	Clean Crop Chlorpyrifos 4E Insecticide	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00216	Betasan 36 Weed & Feed	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00229	Clean Crop Diazinon 4E	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
034704–00449	Clean Drop Chlorpyrifos 1.14G Insecticide + Fertilizer	Plants being grown for sale or other commercial use, commercial seed production, or research purposes
046579–00003	Ryra-Fog I Contact and Space Spray	Mushroom production & processing
046579–00005	Pyra-Fog 3 Contact and Space Spray	Mushroom production & processing
046579–00006	Pyra-Fog 5 Contact and Space Spray	Mushroom production & processing
059144–00009	Green Charm Dursban 1% Granules	Turf being grown for sale or other commercial use as sod, or for commercial seed production, or for research purposes

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27025.
000270	Farnam Companies Inc., 301 W. Osborn Rd., Phoenix, AZ 85013.
000279	FMC Corp., ACG Speciality Products, 1735 Market Street, Philadelphia, PA 19103.
000432	Roussel UCLAF Corp., 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000498	Chase Products Co., The Quality First Co., Box 70, Maywood, IL 60153.
000524	Monsanto Co., c/o Roy G. Danhaus, 700 14th St., N.W., Suite 1100, Washington, DC 20005.
000538	O.M. Scott & Sons Co., 14111 Scottslawn Rd., Marysville, OH 43041.
000572	Rockland Corp., 686 Passaic Ave., Box 809, West Caldwell, NJ 07007.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
000746	Imperial Inc., Agent For: MFA Oil Co., Box 98, Shenandoah, IA 51601.
000802	Chas H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218.
001109	Boliden Intertrade Inc., 3379 Peachtree Rd NE, Atlanta, GA 30326.
001381	Cenex/Land O'lakes, Box 98, Shenandoah, IA 51601.
002217	Chemical Consultants Intl., Agent For: PBI/gordon Corp., 7270 W 98th Terrace, Suite 1, Overland Park, KS 66212.
002548	Research Products Co., Division of Mcshares, Inc., Box 1460, Salina, KS 67402.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd Box 4913, Kansas City, MO 64120.
003772	Bonide Products Inc., Agent For: Earl May Seed & N, 2 Wurz Ave, Yorkville, NY 13495.
003862	ABC Compounding Co, Inc., Box 16247, Atlanta, GA 30321.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Company No.	Company Name and Address
004816	Roussel UCLAF Corp., 95 Chestnut Ridge Rd, Montvale, NJ 07645.
006133	Cadwell & Jones Inc., 46 Adams St. Box G Buckland, Manchester, CT 06040.
008378	H.R. Mclane, Agent For: Knox Fertilizer Co., 7210 S W 57th Ave., Suite 212A, Miami, FL 33143.
008590	Universal Cooperatives Inc., Agent For: Agway Inc., Box 460, Minneapolis, MN 55440.
009198	The Andersons Lawn Fertilizer, DBA/ Free Flow Fertilizer, Box 119, Maumee, OH 43537.
010370	Roussel UCLAF Corp., 95 Chestnut Ridge Rd., Montvale, NJ 07645.
010404	Lesco Inc., 20005 Lake Rd., Box 16915, Rocky River, OH 44116.
011474	Sungro Chemicals, Inc., P. O. Box 24632, Los Angeles, CA 90024.
011540	Micro-Gen Equipment Corp., 10700 Sentinel Dr., San Antonio, TX 78217.
028293	Unicorn Labs & Phaeton Corp., 1000 118th Ave N, St. Petersburg, FL 33716.
032802	H R Mclane Inc., Agent For: Howard Johnson's, 7210 Red Rd., Suite 206, Miami, FL 33143.
034704	William M. Mahlburg, Agent For: Platte Chemical Co., Box 667, Greeley, CO 80632.
046579	Dickson Chemical Co., Inc., 2110 S. Prairie, Stuttgart, AR 72160.
059144	Gro Tec Inc., Box 290, Madison, GA 30650.

III. Existing Stocks Provisions

The products listed in this notice are within scope of theWorker Protection Standard (WPS), but the current labeling doesnot comply with WPS. As a result, after April 21, 1994, exceptas provided in PR Notice 93–11, registrants cannot distribute orsell products under the current approved labeling.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: April 20, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–11198 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50786; FRL–4777–3]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous and Genetically Modified Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Department of Plant Pathology, Cornell University, a notification of intent to conduct small-scale field testing in New York with four nonindigenous strains and eleven genetically modified strains of *Erwinia herbicola*.

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

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Steven D. Robbins, Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: A Notification of intent to conduct small-scale field testing pursuant to EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), dated March 31, 1994, has been received from the Department of Plant Pathology, Cornell University, Ithaca, NY 14853. The purpose of the proposed testing is to evaluate the efficacy of four nonindigenous strains and eleven genetically modified strains of *Erwinia herbicola* for the control of fire blight in apples. The nonindigenous strains were isolated from fruit trees in Israel. The genetically modified strains were produced from indigenous and nonindigenous strains of *Erwinia herbicola* by transposon mutagenesis. The proposed field tests would be conducted in the state of New York on a total area of less than 10 acres.

Dated: April 21, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–11193 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30361; FRL–4770–4]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by June 9, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30361] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401

M St., SW., Washington, DC 20460, In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/ telephone number	Address
PM 21 Sidney C. Jackson, (Acting)	Rm. 227, CM #2 (703–305–6900).	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 22 Cynthia Giles-Parker,	Rm. 229, CM #2 (703–305–5540).	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 55638–RT. Applicant: Ecogen Inc., 2005 Cabot Blvd, West, Langhorne, PA 19047–1810. Product name: AQ-10 Technical Powder. Microbial Fungicide. Active ingredient: *Ampelomyces quisqualis* isolate M-10 at 1 percent. Proposed classification/Use: None. For manufacturing end-use products and for application on apples, cucurbits, grapes, ornamentals, strawberries, and tomatoes. (PM 21)

2. File Symbol: 55638–RA. Applicant: Ecogen Inc. Product name: AQ-10 Biofungicide. Microbial Fungicide. Active ingredient: *Ampelomyces quisqualis* isolate M-10 at 1.0 percent. Proposed classification/Use: None. For the control of powdery mildew on certain crops. (PM 21)

3. File Symbol: 264–LUI. Applicant: Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. Product name: Chipco Bromuconazole. Fungicide. Active ingredient: Bromuconazole 1-((2-(2,4-dichlorophenyl) 4-bromotetrahydro-2-furanyl) methyl)-1*H*-1,2,4-triazole at 20.0 percent. Proposed classification/Use: None. For prevention and control of certain diseases of turfgrass. (PM 21)

4. File Symbol: 264–LUT. Applicant: Rhone-Poulenc Ag Co. Product name: Bromuconazole Technical. Fungicide. Active ingredient: Bromuconazole 1-[[4-bromo-2-(2,4-dichlorophenyl) tetrahydro-2-furanyl] methyl]-1*H*-1,2,4-triazole at 97.0 percent. Proposed classification/Use: None. For manufacturing, formulating, and repackaging use only. (PM 21)

5. File Symbol: 59174–G. Applicant: Appropriate Technology, Inc., 3601 Garden Brook, Dallas, TX 75234. Product name: Agrispon Technical. Nematocide. Active ingredient: Plant extract at 0.56 percent. Proposed classification/Use: None. For manufacturing use to be formulated into end-use products for use on food, ornamentals, and forestry. (PM 22)

6. File Symbol: 56872–R. Applicant: Gardens Alive, Inc., 5100 Schenley Place, Lawrenceburg, IN 47025. Product name: A-Maizing Lawn. Herbicide. Active ingredient: Maize gluten meal at 100 percent. Proposed classification/Use: None. For use on turfgrass and ornamentals. (PM 22)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: April 21, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–11200 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–571; DA 94–298]

Telecommunications Relay Services

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: In fulfillment of requirements of the Americans with Disabilities Act of 1990 (ADA), the Commission added rules which requires the Telecommunications Relay Services (TRS) fund administrator to file annual estimated TRS fund requirements for the shared-funding mechanism to recover the costs of providing interstate TRS. As stated in FCC Order in CC Docket 90–571 (DA 94–298) adopted April 1, 1994 and released April 5, 1994, the National Exchange Carrier Association, Inc. (NECA), who is the interim fund administrator, has filed its estimates for the period April 1994 through March 1995. Based on those estimates, the contribution factor and the "1994 TRS Fund Worksheet" (FCC Form 431 attached hereto) were adopted.

EFFECTIVE DATE: April 5, 1994.

FOR FURTHER INFORMATION CONTACT: Linda Dubroof, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1808, or James Lande, Industry Analysis Division, Common Carrier Bureau, (202) 632–1371.

SUPPLEMENTARY INFORMATION: Pursuant to the Order, the TRS Fund Worksheet, FCC Form 431, is effective for the period April 26, 1994 through March 25, 1995. All subject carriers are required to file

the form annually and contribute to the TRS Fund. The TRS Fund reimburses TRS providers for the costs of providing interstate TRS. The Order provides that the Commission publish the 1994 TRS Fund Worksheet, FCC Form 431, in the **Federal Register.**

Federal Communications Commission.

A. Richard Metzger, Jr.,

Acting Chief, Common Carrier Bureau.

Instructions for Completing the Worksheet for Calculating and Filing Carrier Contributions to Fund Interstate Telecommunications Relay Service (TRS)

TRS Fund Worksheet

Notice to individuals: Section 64.604(c)(4)(iii) of the Commission's Rules requires all carriers providing interstate service to complete this worksheet and to contribute funding for interstate Telecommunications Relay Services (TRS). The collection of information and fees stems from the Commission's authority under the Communications Act of 1934, Sections 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply Sections 201, 211, 218, 219, 220, 225 48 Stat. 1073, 1077, as amended; 47 U.S.C. 201, 211, 218, 219, 220, 225. The data in the report will be used to ensure that carriers properly fund interstate TRS. Selected information provided in the worksheet will be made available to the public in a manner consistent with the Commission's Rules. All carriers providing interstate telecommunications service must file this worksheet. Other telecommunications carriers may voluntarily file this worksheet.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93–579, December 31, 1974, 5 U.S.C. 552(a)(e)(3), and the Paperwork Reduction Act of 1980, P.L. 96–511, Section 3504(c)(3).

Public reporting burden for this collection of information is estimated to average 2 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Records Management Division, Washington, DC 20554, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060–0536), Washington, DC 20503.

I. Introduction

On July 15, 1993, the Commission adopted rules that require all providers of interstate telecommunications services to contribute to the provision of TRS based on their proportionate share of gross interstate revenues. Section 64.604(c)(4)(iii) directs carriers to calculate and file their contribution in accordance with TRS Fund Worksheet.

Contributions shall be calculated and filed in accordance with a "TRS Fund Worksheet", which will be prepared and published in the Federal Register. The worksheet sets forth information that must be provided by the contributor, the formula for computing the contribution, the manner of payment, and due dates for payments.

II. Filing Requirements and General Instructions

A. Who Must File

All common carriers providing interstate telecommunications services within the United States must file this worksheet. For this purpose, the United States is defined as the conterminous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

For the purpose of calculating TRS contributions, interstate telecommunications service includes, but is not limited to the interstate portion of the following types of services: cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including Subscriber Line Charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, international, intraLATA, and resale services. Note, that all local exchange carriers provide interstate access services, and therefore must file.

Carriers need not file if they provide only intrastate service. Carriers need not file if they did not provide interstate service in calendar year 1993. However, all such carriers are encouraged to file because all carriers that file will be included in the FCC Carrier Locator. The Carrier Locator is a directory of telecommunications common carriers available to the public through the Commission's contract copier or on-line through the FCC-State Link computer bulletin board at (202) 632–1361. All carriers that are required to file or that voluntarily file must include a TRS fund contribution. The minimum contribution is $100.

Entities may not file summary reports for more than one carrier. Each legal entity that provides Interstate telecommunications service must file separately. Entities that have distinct articles of incorporation are separate legal entities. All affiliates or subsidiaries should identify the ultimate controlling parent or entity in Block 1, Line (1c)—Holding Company.

B. When and Where to File

The 1994 TRS contribution period will fund interstate TRS provided between May 1, 1994 and April 30, 1995. Monthly contributions for the 1994 TRS contribution period must be received by the 26th of each month for April 1994 through March 1995. A revised TRS Worksheet will be released for the 1995 TRS contribution period.

The legal name of the carrier and the TRS Company Code (if known) should be shown on all checks exactly as it appears on the completed TRS Fund Worksheet. Do not mail the TRS worksheet or TRS contribution checks to the FCC. Payments must be received by the FCC TRS Fund Administrator—the National Exchange Carrier Association (NECA)—no later than the dates indicated below. The filing schedule is as follows:

Mailing address	Worksheet due 4/26/94	Payments due 4/26/94 through 3/26/95*
NECA TRS, P.O. Box 360090, Pittsburgh, PA 15251–6090.	.....	Check**.
NECA, FCC TRS Fund Administration, 100 South Jefferson Rd., Whippany, NJ 07981; Telephone: 201–884–8173; Fax: 201–884–8469.	Completed worksheet.	Photocopy of check**.

*Carriers whose total 1994 TRS contribution is less than $1,200 must pay the total amount to the FCC TRS Fund Administrator no later than April 26, 1994. Carriers whose total 1994 TRS contribution is $1,200 or greater may elect to make twelve equal monthly payments with the first payment due to the FCC TRS Fund Administrator no later than April 26, 1994.

**Carriers are encouraged to contact the FCC TRS Fund Administrator to make arrangements for Electronic Funds Transfer.

C. Rounding of Numbers

All information provided in the worksheet, except the signature, should be neatly printed in ink or typed. Reported revenues in block 2, column (b) may be rounded to the nearest thousand dollars. Regardless of rounding, all dollar amounts must be reported in whole dollars. For example, $2,271,881.93 could be reported as $2,271,882 or as $2,272,000, but could not be reported as $2,272 thousand or $2.272 million. Please enter $0 if there was no revenue for the line for 1993.

Percentages reported in block 2, column (c) should be rounded to the nearest whole percent. For example, if the ratio of interstate to total revenue was .4269155, then the figure 43% should be reported. Percentages between 0% and 1% should be reported as 1%. Please enter 0% if there was no interstate revenue for the line for 1993.

Interstate revenues are calculated as total revenues in column (b) times the percentage shown in column (c). Calculated interstate revenues should be rounded to the nearest whole dollar and entered in column (e). Similarly, the total contribution (block 3, line (18)) and amounts enclosed with the filing (block 3, line (19)) should be rounded to the nearest whole dollar.

D. Compliance

Carriers failing to file the TRS Worksheet in a timely fashion are subject to the fines prescribed in Section 219(b) of the Communications Act of 1934 (the Act). Carriers filing false information are subject to fines or imprisonment as specified in Section

220(e) of the Act. Carriers failing to contribute in a timely fashion are subject to fines prescribed in Section 503(b) of the Act. In addition, Section 64.604(c)(4) of the Commission's Rules authorizes the FCC Fund Administrator to bill a carrier for reasonable costs, including legal fees, that are caused by improper filing of the worksheet or overdue TRS contributions.

III. Specific Instructions

A. Block 1: Carrier Identification

Block 1 of the TRS Fund Worksheet requires identification information. Line 1a requests the legal name of the carrier as it appears on articles of incorporation or other legal documents. Line 1b provides a checkoff for the principal carrier activity. Please check the category that best describes the carrier.

LEC—Local Exchange Carrier—provider of franchised local exchange service.

Cellular—Cellular telephone company.

Mobile—Any non-cellular provider of mobile services, such as a radio telephone, paging, or PCS.

OSP—Operator Service Providers—are companies other than LECs that provide services to customers needing assistance of an operator such as to complete away from home calls, or calls using alternate billing arrangements. These companies typically employ operators as well as credit and cash card technologies to complete calls.

IXC—Interexchange Carrier.

CAP—Competitive Access Provider—competes with local exchange carriers to provide services that link customers with interexchange facilities, local exchange networks, or other customers.

Pay Telephone—Provides customers access to telephone networks through pay telephone equipment, special teleconference rooms, etc.

Reseller—Leases underlying transmission facilities for purposes of providing interexchange service.

Other—Check other if none of the above categories describes the carriers.

Line 1c requests the name of the holding company or controlling entity, if any. All affiliates should have the same name for line 1c. Line 2 requests the principal business name under which the company conducts carrier activities. This would typically be the name that appears on customer bills, or the name used when service representatives answer customer inquiries. For example, American Telephone and Telegraph, Inc. might show AT&T. Line 3 requests the complete mailing address of the corporate headquarters. Line 4 requests a telephone number that can be used for customer inquiries. Information provided in Block 1 will be published in the industry Analysis Division Carrier Locator.

B. Block 2: Carrier Revenue for Calendar Year 1993

1. Column (b)

Provide gross revenues for all telecommunications services for calendar 1993. Gross revenues include revenues from regulated, detariffed, and nonregulated telecommunications services. Gross revenues should not include nontelecommunications services, such as the lease of customer premises equipment. Gross revenues consist of total revenues billed to customers with no allowances for uncollectibles. Billed revenues may be distinct from booked revenues. NECA pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool. For international services, gross revenues consist of gross revenues billed by U.S. carriers with no allowances for settlement payments. Gross revenues should also include any surcharges on communications services that are billed to the customer and either retained by the carrier or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded as revenue, but which are instead remitted to government bodies. Carrier revenue data for calendar 1993 should be taken from the latest available company official records as of April 1994.

Report carrier revenues using the categories shown in column (a) of Block 2. Carriers required to use the Uniform System of Accounts (USOA) prescribed in Part 32 of the Commission's rules should base their response on their USOA account data. Other carriers should divide gross revenues based on the following descriptions.

Line (5)—Local exchange service—should include the basic local service revenues of local exchange carriers except for local private line revenue, access revenues, and revenues from providing mobile or cellular services to the public. Line (5) should include Account 5001—basic area revenue; Account 5002—Optional extended area revenue; Account 5003—Cellular mobile revenue (revenue to the local exchange carrier for messages between a cellular customer and another station within the mobile service area); Account 5050—Customer premises revenue; Account 5060—Other local exchange revenue; and, Account 5069—Other local exchange revenue settlements. Line (5) should also include amounts in Account 5004—Other mobile services revenue—that were derived from connecting with mobile service carriers.

Line (5) should not include Account 5010—pay telephone revenues. Such revenues should be included in line (11)—Operator service and pay telephone revenues. In addition, Line (5) should not include revenues from the Universal Service Fund and Lifeline Assistance Revenues (reimbursement for the waived portion of subscriber line charges). Such revenues should be included in Line (9)—interstate access revenues.

Line (6)—Local private line service—should include revenues from providing local services that involve dedicated circuits, private switching arrangements and/or predefined transmission paths. Line (6) should include amounts recorded in Account 5040—Local private line revenue.

Line (7)—Mobile radio, cellular, and paging—should include revenues from the provision of mobile radio, cellular, and paging services to the public. Line (7) should also include amounts in Account 5004—Other mobile services revenue—that were derived from providing service directly to the public.

Line (8)—Alternative access, PCS & other—should include all other local service revenues, including revenues for competitive access providers, personal communications services (PCS), etc. Line (8) should include Account 5200—Miscellaneous revenue.

Long distance revenues include intrastate, interstate, and international long distance services. Divide long distance revenues between access service, operator service, other switched service, long distance private line services, and all other long distance services.

Line (9)—Interstate access—should include revenues in Account 5081—End User revenue; Account 5082—Switched access revenue; and, Account 5083—Special access revenue. In addition, line (9) should include revenues from the Universal Service Fund and Lifeline Assistance Revenues (reimbursement for the waived portion of subscriber line charges). Only carriers collecting revenues pursuant to interstate access tariffs filed with the FCC should be reporting non-zero amounts on line (9).

Line (10)—Intrastate access—should include revenues in Account 5084—State access revenue. Only carriers collecting revenues pursuant to intrastate access tariffs should be reporting data in line (10).

Line (11)—Operator service and Pay Telephone—should include all calling card or credit card calls, person to person calls, and calls with alternative billing arrangements such as third number billing and collect calls. In addition, Line (11) should also include all pay telephone revenue, including all revenue in Account 5010. Operator service revenues should include all toll traffic from coin, public and semi-public, accommodation and prison telephones.

Line (12)—Non-operator switched toll service—should include amounts from Account 5100—Long distance message revenue—except for amounts reported in Line (11). Line (12) includes WATS, 800, 900, "WATS like" and similar switched service.

Line (13)—Long distance private line service—should include revenue from dedicated circuits, private switching arrangements, and/or predefined transmission paths, extending beyond the basic service area. Line (13) should include Account 5120—Long distance private network revenue.

Line (14)—All other long distance—should include all other revenues from providing long distance communications services. Line (14) should include Account 5160—Other long distance revenue.

Total the figures in column (b) for Line (5) through Line (14) and enter this amount in Line (15b). This should represent the total communications revenues for the company.

2. Column (c) and Column (d)

For each entry in Line (5) through Line (14), estimate the percentage of revenues in Column (b) that are for interstate and/or international service, and enter this percentage in Column (c). Interstate revenues include all revenues received for calls that do not originate and terminate in the same state. For example, if a cellular carrier collects a fixed amount of revenue per minute of traffic,

and 10% of minutes are interstate, then interstate revenues would include 10% of the per minute revenues.

Wherever possible, carriers should calculate the percentage of total revenues that are interstate by using information from their books of accounts and other internal data reporting systems. Carriers who cannot calculate a percentage by using information from their books of accounts and other internal data reporting systems, may elect to rely on a special study to estimate the percentages. Place a check mark in Column (d) if the percentage shown in Column (c) was based on a study e.g., not based on a direct calculation from revenue amounts taken from the carrier's book of account.

3. Column (e)

Multiply the gross revenues reported in Column (b) by the interstate percentages reported in Column (c), putting the results in Column (e). The sum of the figures in Column (e), Lines (5) through (14), should be entered in Line (15e).

C. Block 3: Calculation of Contribution

Use block 3 in the worksheet to calculate the TRS contribution for the period May 1, 1994 through April 30, 1995. Total interstate revenues from Line (15e) should be copied to Line (16). This amount must be multiplied by the Contribution Rate shown in Line (17), with the result entered in Line (18). The contribution rate is 0.00030 for the 1994 filing year.

If the result of the calculation is less than $100, then the total contribution is $100. If the total contribution is less than $1,200, then the carrier should remit the total contribution with the worksheet. If the total liability is equal to or greater than $1,200, then the carrier may elect to make 12 equal monthly payments. The monthly contribution should be calculated as the amount in Line (18) divided by 12.0, rounded to the nearest whole dollar. Enter the amount of the April 26, 1994 fund contribution in Line (19). If the carrier elects to make monthly contributions, the eleven additional monthly contributions must be received by the 26th of succeeding months, May 1994 through March 1995.

Section II—B above provides directions for mailing the completed TRS Fund Worksheet and checks for amounts due to the FCC Fund Administrator. Carriers who check the box in Line (19) will receive monthly payment reminders. These reminders will be mailed to the address shown in Line (3). Contact the NECA, the FCC Fund Administrator to make other arrangements. Failure to receive a reminder notice will not justify late payments.

D. Block 4. Certification

An officer of the fund contributor must examine the data provided in the TRS Fund Worksheet and certify that the information provided therein is accurate. In addition, the fund contributor should provide the name of a contact person who can provide clarifications, if necessary, and who could serve as the first point of contact in the event that either the FCC or the FCC Fund Administrator should choose to audit information provided by the company.

Line (26) provides a check off to show whether the worksheet is the original filing for 1994, or whether the worksheet is a revised 1994 filing. A carrier must file a revised worksheet if it discovers an error in the data that it reports. Carriers generally close their books for financial purposes by April. Carriers should not report routine out of period adjustments to revenue data unless such adjustments would affect a reported amount by more than 10%. Carriers should not file a revised Form 431 to reflect mergers, acquisitions, or sale of operating units. In the event that a carrier that filed a Form 431 no longer exists, the successor company to the carrier's assets or operations is responsible to continue making payments for the funding period.

IV. Reminders

—Each affiliate or subsidiary must file separately. Each should show the same holding company name on Line 1c.
—Provide data for all lines that apply. Show a zero for all items where the carrier had no revenue for calendar 1993.
—Only LECs should be reporting revenue on Line 5.
—Only carriers with access tariffs should be reporting access revenues on line 9 and line 10.
—All pay telephone, credit card, debit card, and operator assisted revenue should be included on Line 11.
—Check the special study box for each line where the percentage of interstate revenues cannot be directly calculated from revenue amounts taken from the carrier's books of account.
—Include the legal name of the carrier (Line 1a) on all TRS fund checks. Also include the TRS company code on checks. The TRS company code is assigned by NECA, the fund administrator.

BILLING CODE 6712-01-M

1994 TRS FUND WORKSHEET

(Please read instructions before completing)

Approved by OMB 3060-0536 Expires 02/28/96

Estimated Average Burden Hours Per Response: 2 Hours

Block 1: Carrier Identification TRS Company Code supplied by NECA >

1a Legal Name of Carrier ▶

1b Principal Communications Business (check only one)

☐ LEC ☐ Cellular ☐ Mobile ☐ OSP ☐ IXC ☐ CAP ☐ Pay Telephone

☐ Reseller ☐ Other (explain):

1c Holding Company ▶

2 Principal Business Name for Carrier ▶

3 Complete Mailing Address of Carrier Corporate Headquarters ▶

4 Telephone # for Customer Inquiries ▶ ( )-

Block 2: Carrier revenue for calendar year 1993 Note: Please report whole dollars without further rounding.

(a)	Gross Revenues (b)	% Interstate (c)	Special study (d)	Interstate Revenues (e) = (b) x (c)
Local Services				
5 Local exchange service	$	%		$
6 Local private line service	$	%		$
7 Mobile radio, cellular, and paging	$	%		$
8 Alternative access, PCS & other	$	%		$
Long Distance				
9 Interstate access	$	100 %		$
10 Intrastate access	$	0 %		$ 0
11 Operator service and Pay Telephone	$	%		$
12 Non-operator switched toll service	$	%		$
13 Long distance private line service	$	%		$
14 All other long distance	$	%		$
15 Total lines 5 through 14	$			$

Block 3: Calculation of Contribution Note: Please report whole dollars without further rounding.

16 Interstate Revenues from Line 15e	$
17 Contribution Rate:	x 0.00030
18 Total CONTRIBUTION for April 1994 through March 1995: line 16 x line 17 (The minimum contribution is $100)	$
19 Contribution to be paid this month: (Enter the amount from line 18 if it is less than $1200. Otherwise, the contributor may divide line 18 by 12.0 to calculate equal monthly contributions).	$
Check here for monthly billing reminders ▶ ☐	

Block 4: Certification

I certify that I am an officer of the carrier named above, that I have examined the foregoing report and that to the best of my knowledge, information and belief, all statements of fact contained in this worksheet are true and that said worksheet is an accurate statement of the affairs of the above named carrier for the period January 1, 1993 through December 31, 1993.

20 Printed Name of Officer ▶

21 Position with carrier ▶

22 Signature ▶

23 Date ▶

24 Contact Person ▶

25 Telephone Number of Contact Person ▶ ( )-

25 This filing is: ☐ Original filing for 1994 ☐ Revised filing for 1994

Mail checks to: NECA TRS P.O. Box 360090 Pittsburgh, PA 15251-6090. For additional information call NECA 201-884-8173.

Mail worksheet and photocopy of checks to: NECA – FCC TRS Fund Administration 100 South Jefferson Rd. Whippany, NJ 07981

PERSONS MAKING WILLFUL FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER THE COMMUNICATIONS ACT, 47 U.S.C. 220(e).

FCC 431
March 1994

BILLING CODE 6712-01-C

Notice to individuals: Section 64.604(c)(4)(iii) of the Commission's Rules requires all carriers providing interstate service to complete this worksheet and to contribute funding for interstate Telecommunications Relay Services (TRS). The collection of information and fees stems from the Commission's authority under the Communications Act of 1934, Sections 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply Sections 201, 211, 218, 219, 220, 225, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 201, 211, 218, 219, 220, 225. The data in the report will be used to ensure that carriers properly fund interstate TRS. Selected information provided in the worksheet will be made available to the public in a manner consistent with the Commission's Rules. All carriers providing interstate telecommunications service must file this worksheet. Other telecommunications carriers may voluntarily file this worksheet.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93–579, December 31, 1974, 5 U.S.C. 552(a)(e)(3), and the Paperwork Reduction Act of 1980, P.L. 96–511, Section 3504(c)(3).

Public reporting burden for this collection of information is estimated to average 2 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Records Management Division, Washington, DC 20554, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (3060–0536), Washington, DC 20503.

[FR Doc. 94–11067 Filed 5–9–94; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2009]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 5, 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 25, 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: Amendment of the Commission's Rules to Establish New Narrowband Renewal Communications Services (Gen. Docket No. 90–314, ET Docket No. 92–100).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–11171 Filed 5–9–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1022–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1022–DR), dated April 14, 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 Tennessee dated April 14, 1994, is hereby amended to include Public Assistance for 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 14, 1994:

Blount, Hamilton, Jefferson, Monroe, Polk, Sevier, and Unicoi Counties for Public Assistance. (Already designated for Individual Assistance.)

Cocke, Grainger, Hawkins, Johnson, Marion, Putnam and Van Buren Counties for Individual and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–11221 Filed 5–9–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1026–DR]

Texas; 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 Texas (FEMA–1026–DR), dated April 29, 1994, and related determinations.

EFFECTIVE DATE: April 29, 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 29, 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 Texas, resulting from severe storms and tornadoes on April 25, 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 Texas.

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 Dell Greer 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 Texas to have been affected adversely by this declared major disaster:

Cooke and Dallas Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–11222 Filed 5–9–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Compass 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 6, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Compass Bancorp, New Bedford, Massachusetts; to become a bank holding company by acquiring 100 percent of Compass Bank for Savings, New Bedford, Massachusetts, and thereby indirectly acquire 9.74 percent of the voting shares of Mayflower Cooperative Bank, Middleborough, Massachusetts.

Upon the reorganization, Compass Bank for Savings will continue to participate in the Massachusetts Savings Bank Life Insurance program.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Copper Bancshares, Inc., Silver City, New Mexico, and thereby indirectly acquire American National Bank of Silver City, Silver City New Mexico.

C. Federal Reserve Bank of Kansas City (Stephen E. McBride, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Morrill Bancshares, Inc., Sabetha, Kansas; to acquire 100 percent of the voting shares of Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, and thereby indirectly acquire Morrill and Janes Bank and Trust Company, Hiawatha, Kansas.

Board of Governors of the Federal Reserve System, May 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11237 Filed 5-9-94; 8:45 am]

BILLING CODE 6210-01-F

Garrett Bancshares. Ltd., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Garrett Bancshares, Ltd., Bloomfield, Iowa; to engage *de novo* through its subsidiary in the making and servicing of loans, for the one time extension of credit to North Side of the Square, Inc., a wholly owned subsidiary of Garrett Bancshares' subsidiary bank, Davis County Savings Bank, Bloomfield, Iowa, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First State Bancorp, Inc., La Crosse, Wisconsin; to engage *de novo* through its subsidiary Community First Development Corporation, La Crosse, Wisconsin, in establishing a community development corporation pursuant to § 225.25(b)(6) of the Board's Regulation Y, and engage in the construction of low- and moderate-income housing in and around the La Crosse, Wisconsin area; to construct or rehabilitate rental housing for low-and-moderate income familes; and to purchase, rehabilitate and sell affordable owner-occupied housing for low and moderate income persons.

2. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* in forming a joint venture, Legacy Mortgage, which will engage in residential mortgage, lending business pursuant to § 225.25(b)(1) of the Board's Regulation Y. The joint venture will be equally owned by one of Norwest's subsidiaries, Norwest Mortgage, Inc., and Heritage Realtors, Centerville, Ohio. These activities will be conducted in the state of Ohio.

Board of Governors of the Federal Reserve System, May 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11238 Filed 5-9-94; 8:45 am]

BILLING CODE 6210-01-F

J.P. Morgan & Co. Incorporated; Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 94-10526) published on page 22853 of the issue for Tuesday, May 3, 1994.

Under the Federal Reserve Bank of New York heading, the entry for JP Morgan & Co. Incorporated is revised to read as follows:

1. J.P. Morgan & Co. Incorporated, New York, New York; to retain a partnership investment of 39.6 percent

of equity and to increase its interest to 59.4 percent, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y; to retain 6.06 percent equity interest in The New York Equity Fund 1989 Limited Partnership and a 18.73 percent partnership interest in HUDCTC Limited Partnership, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Comments on this application must be received by May 27, 1994.

Board of Governors of the Federal Reserve System, May 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11239 Filed 5-9-94; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; 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 6, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire American Land Title Company of Kansas City, Inc., Kansas City, Missouri, and thereby engage in activities customary of title insurance agencies operating in the states of Missouri and Kansas, including acting as agent for the title insurance company in issuing commitments and policies of title insurance; acting as escrow agent in real estate transactions; and providing real estate settlement services, pursuant to § 225.25(b)(3) of the Board's Regulation Y and Norwest Corporation, 76 Federal Reserve Bulletin 1058 (1990).

Board of Governors of the Federal Reserve System, May 4, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-11240 Filed 5-9-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Notice of State Application for Exemption From the Provisions of the Fair Debt Collection Practices Act

AGENCY: Federal Trade Commission.

ACTION: Invitation to comment on requested exemption from the provisions of the Fair Debt Collection Practices Act.

SUMMARY: The Commission is hereby publishing a notice that the State of Maine has filed an application for exemption from the provisions of the Fair Debt Collection Practices Act for various classes of debt collection practices in Maine.

DATES: Written comments will be accepted until August 8, 1994.

ADDRESSES: Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington DC 20580. Requests for copies of the application and of the Fair Debt Collection Practices Act should be directed to the Federal Trade Commission Public Reference Branch, Room 130; telephone (202) 326–2222.

FOR FURTHER INFORMATION CONTACT: John F. LeFevre or Roger J. Fitzpatrick, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326–3224.

SUPPLEMENTARY INFORMATION: The Fair Debt Collection Practices Act, 15 U.S.C. 1691 *et seq.* ("Act" or "federal Act"), prohibits a number of deceptive, unfair and abusive practices by third party debt collectors. The Act prohibits debt collectors from using false or misleading statements, harassing or abusive conduct or any unfair methods to collect debts. Among those things which are specifically prohibited are making false threats to coerce payment (such as false threats of suit); using deceptive collection notices that falsely appear to be from an attorney or a court; and engaging in any sort of harassment, such as threatening violence, using profanity and obscenities, or making continuous phone calls. The Act also restricts the extent to which debt collectors may call a consumer at work, and prohibits them from making calls to consumers very early in the morning or late at night. With a few narrow exceptions, it prohibits collectors from contacting third parties and revealing the existence of a consumer's debt. In addition, the Act prohibits collectors from adding charges to a debt unless the consumer involved agrees to them or they are permitted by law, and from filing suit against a consumer outside of the district (1) of the consumer's residence or (2) where the contract creating the debt was signed.

Under the Act, if a consumer disputes the debt in writing, the collector is required to stop all collection efforts until the debt is verified. The Act also states that if the consumer demands in writing that the debt collector cease all further collection efforts, the debt collector must comply even if the debt is valid. Finally, the Act gives a consumer the right to bring suit against a debt collector in any court for violations of the Act and, if successful, receive actual damages and additional damages up to $1,000, as well as costs and attorney's fees.

The Act is enforced primarily by the Federal Trade Commission. A violation of the Act is deemed an unfair or deceptive practice in violation of the Federal Trade Commission Act. All of the functions and powers of the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the Act. The Commission may enforce the provisions of the Act in federal courts seeking civil penalties and injunctive and other relief as appropriate.

The Act requires that the Commission exempt from its requirements any class

of debt collection practices within any State if the Commission determines under the law of that State that a class of debt collection practices is subject to requirements substantially similar to those imposed by the Act, and that there is adequate provision for enforcement.

The Commission has promulgated procedures for State application for exemption from the provisions of the Act which are published in 16 CFR 901 *et seq.* (1992) ("Rule"). Section 901.2 of the Rule provides that any State may apply to the Commission for a determination that under the laws of that State, any class of debt collection practices within that State is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under Sections 803 through 812 of the Act and that there is adequate provision for State enforcement of such requirements. Section 901.4 of the Rule describes the criteria for making the determination. In making that determination the Commission primarily will consider each provision of the State law in comparison with each corresponding provision in Sections 803 through 812 of the Act, and not the Sate law as a whole in comparison with the Act as a whole.

Section 901.3 of the Rule requires that an application be accompanied by a variety of documents including (1) the State law; (2) a comparison of the provisions of the State law with various sections of the Act; (3) a copy of the full text of the law that provides for its enforcement; (4) a comparison of the provisions of the law that provides for enforcement with the provisions of Section 814 of the Act; and (5) a statement identifying the State office designated to administer the State law along with a description of the ability of that office to effectively administer the statute. If an application is filed in accordance with these procedures, Section 901.5 states that the filing shall be published in the **Federal Register.** Section 901.6 provides that the Commission may grant an exemption under the provisions of the Rule.

On February 25, 1993, the State of Maine Bureau of Consumer Credit Protection ("applicant") filed an application seeking exemption from the provisions of the federal Act for various classes of debt collection practices in Maine governed by Title 32 of Maine Revised Statutes, section 11001 *et seq.* Maine seeks an exemption for the following classes of practices: collection by means of the mails and other inter-state and intra-state written communication; collections by use of telephone and other electronic means of transmission; in-person collection; and repossession or other "enforcement of security interest" activity.

On May 27, 1993, applicant filed an addendum to its application of February 25, 1993, stating that certain changes had been made to Title 32 of the Maine Revised Statutes, Section 11002.6. The definition of the term "debt collector" was broadened to include attorneys whose principal activities include collection of debts for clients. Subsection 6 was further amended by including within the definition of debt collector any person who regularly engaged in the enforcement of security interests securing debts, but excluding any person who retrieves collateral when a consumer has voluntarily surrendered possession. A new Section 11017 authorizes a debt collector to take possession of collateral after default under certain conditions.

Applicant asserts that the provisions of Maine's Fair Debt Collection Practices Act ("state Act"), 32 Maine Revised Statutes Annotated, Section 11001 *et seq.*, and related statutes are substantially similar to, or provide greater protection for consumers than, the equivalent provisions of the federal Act, and that the State of Maine is able to provide appropriate enforcement of the state Act's requirements.

I. Description of Differences Between the Federal Act and State Act and Request for Comments on Differences

As summarized below, applicant compares Sections 803 through 812 of the federal Act with comparable sections of the state Act.

(A) *Definitions* (Section 803 of the federal Act; Sections 11002, 11003 and 11012 of the state Act).

Applicant asserts that (1) most of the definitions in the state Act are identical or substantially similar to those in the federal Act; (2) other terms are comparable given the different levels of jurisdiction involved (e.g., the federal Act's definition of "Commission" and the state Act's definition of "Superintendent" each define the responsible authority); and (3) other differences are not substantive.

The differences between the two statutes are as follows:

1. Applicant explains that the defining phrase set out in Section 11002.2, "conducting business within this State," limits its scope to the activities of any debt collectors who: (1) Are located in Maine, or (2) solicit business and then collect debts or repossess collateral in Maine, regardless of the collector's location. This application seeks exemption of only those practices of debt collectors conducting business within Maine, and the activities of debt collectors who have voluntarily subjected themselves to Maine law by obtaining a debt collector's license from Maine.

Public comment is sought as to whether the definition of "conducting business within this State" set out in Section 11002.2 of the state Act affects the level of protection afforded by the state Act as compared to the protection afforded by the federal Act.

2. Section 11002.6 of the state Act includes within the definition of debt collector "persons who furnish collection systems carrying a name which simulates the name of the debt collector and who supply forms or form letters to be used by the creditor even though the forms direct the debtor to make payments directly to the creditor."

Public comment is sought as to whether the above included provision in the definition of debt collector affects the level of protection afforded by the state Act as compared to the protection afforded by the federal Act.

3. Section 11003.8 of the state Act excludes from the definition of "debt collector" collection activities that are confined to and directly related to the operation of a business other than that of a debt collector, such as, but not limited to, financial institutions regulated under Maine Revised Statutes Annotated, Title 9–B, Maine Banking Code.[1] Applicant believes that this section of the state Act is non-substantive. Section 803(6) of the federal Act does not contain this exclusion.

Public comment is sought as to whether the exclusion of certain businesses, including financial institutions, among others, in Section 11003.8 of the state Act affects the level of protection afforded by the state Act as compared to the protection afforded by Section 803(6) of the federal Act.

4. Section 11002.6 of the state Act includes within the definition of debt collector "any attorney-at-law whose principal activities include collection debts as an attorney on behalf of and in the name of clients."[2]

Section 803(6) of the federal Act defines debt collector as "any person

[1] Applicant points out that the drafters of the Maine law chose to place the "exclusions" as a separate section, as opposed to itemizing those within the definition of debt collector.

[2] Section 11003.6 of the state Act, which previously excluded attorneys from the definition of debt collector, was repealed following Maine's request for exemption dated February 25, 1993. Maine submitted an addendum to its application dated May 27, 1993, wherein its exemption request was modified to reflect the inclusion of attorneys within the state Act, as amended. (Maine Public Law 126, May 18, 1993).

who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."[3]

Public comment is sought as to whether the inclusion of attorneys-at-law as debt collectors in Section 11002.6 of the state Act affects the level of protection afforded by the state Act as compared to the protection afforded by Section 803(6) of the federal Act.

5. Section 11002.6 of the state Act, as amended,[4] includes within its definition of debt collector any person regularly engaged in the enforcement of security interests securing debts. Persons who had engaged in the enforcement of security interests more than five times in the previous calendar year would be covered. If a person does not meet those numerical standards for the previous calendar year, the numerical standards are to be applied to the current calendar year. The term does not include any person who retrieves collateral when a consumer has voluntarily surrendered possession.

The federal Act's definition of debt collector in Section 803(6) "includes any person * * * in any business the principal purpose of which is the enforcement of security interests."

Public comment is sought as to whether the difference in coverage between Section 11002.6 of the state Act and Section 803(6) of the federal Act affects the level of protection afforded by the state Act as compared to the federal Act.

6. Section 11017 of the state Act[5] provides that a debt collector acting on behalf of a creditor may take possession of collateral only if possession can be obtained without entry into a dwelling, unless that entry has been authorized after default and without the use of force or other breach of the peace. A debt collector must take inventory of any unsecured property acquired along with the repossessed collateral and immediately notify the consumer that the property will be made available in a manner convenient to the consumer. There is no comparable provision in the federal Act.

Public comment is sought as to whether the difference in coverage between the state Act and the federal Act affects the level of protection afforded by the state Act as compared to the federal Act.

(b) *Acquisition of location information* (Section 804 of the federal Act; Section 11011 of the state Act).

Applicant asserts that the state Act is virtually identical to its federal counterpart and therefore meets the substantially similar test set out in Section 901.2 of the Rule.

(C) *Communications in connection with debt collection* (Section 805 of the federal Act; Section 11012 of the state Act).

Applicant asserts that, with the exception of non-substantive stylistic language differences and differing references to the appropriate respective state or federal related provisions, the two sections are virtually identical and therefore are substantially similar as required under Section 901.2 of the Rule.

(D) *Harassment or abuse, false and misleading representations and unfair practices* (Sections 806, 807, and 808 of the federal Act; Sections 11013.1, .2 and .3 of the state Act).

1. Section 11013.1.C of the state Act prohibits publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of Title 10, Chapter 210 of the Maine statutes, which is the Maine Fair Credit Reporting Act.

The language of the state Act and the federal Act is identical except for the differing references to the federal Fair Credit Reporting Act and the state Fair Credit Reporting Act.

Public comment is sought as to whether reference to the Maine Fair Credit Reporting Act, in lieu of reference to the federal Fair Credit Reporting Act, affects the level of protection afforded by the state Act as compared to the federal Act.

2. Applicant states that Section 806 of the federal Act and Section 11013.1 of the state Act both deal with harassment and abuse and contain identical language. In addition, Section 11013.1.G of the state Act includes prohibitions against use of "shame cards", "shame automobiles" and similar devices, and these additions arguably provide greater protection to consumers.

Public comment is sought as to whether the reference to "shame cards", "shame automobiles" or similar devices in Section 11013.1.G of the state Act affects the level of protection afforded by the state Act as compared to the federal Act.

3. Applicant states that Section 807 of the federal Act and Section 11013.2 of the state Act dealing with false or misleading representations are virtually identical and the state Act therefore is substantially similar to the federal Act as required by Section 901.2 of the Rule.

4. Section 11013.2.F(2) of the state Act prohibits the false representation that a sale, referral or other transfer of any interest in a debt shall cause the consumer to become subject to any practices prohibited by the state Act or Title 9–A, the Maine Consumer Credit Code.

Public comment is sought as to whether the reference to Title 9–A of the Maine Consumer Credit Code in Section 11013.2.F(2) affects the level of protection afforded by the state Act as compared to the federal Act.

5. Section 11013.2.P of the state Act prohibits the false representation or implication that a debt collector operates or is employed by a consumer reporting agency, as defined by Title 10, Section 1312, subsection 4 of the Maine Fair Credit Reporting Act.

Public comment is sought as to whether the reference to Title 10, Section 1312, subsection 4, of the Maine Fair Credit Reporting Act affects the level of protection afforded by the state Act as compared to federal Act.

6. Applicant asserts that comparison of Section 808 of the federal Act and Section 11013.3 of the state Act, dealing with unfair practices, reveals that the state Act prohibits the same practices as the federal Act, as well as several additional unfair practices.

The added unfair practices (subsections 11013.3. I through N) include use of notaries or public officials authorized to serve legal papers to collect debts; employing the services of an attorney unless this is specifically authorized by the creditor in writing and none of the lawyer's fees will be sought or received by the collector; failing to return claims to the creditor, failing to account to a client for monies collected, and failing to return valuable papers to the creditor; commingling collector and creditor funds; use of creditor's money in collection of debts; soliciting loans to pay a debt or recommending persons as a source of funds to pay a debt; and threatening to bring legal action in the collector's own

[3] The federal Act's definition of "debt collector" was amended in 1985 to repeal the attorney at law exemption previously set out in former Section 803(6)(F). An attorney is now a debt collector under the federal Act, as amended, if the attorney's efforts regularly to collect consumer debts on behalf of clients include activities traditionally associated with debt collection, such as sending demand letters (dunning notices) or making collection telephone calls to consumers. See Commentary on the Fair Debt Collection Practices Act, 53 FR 50097, 50102 (1988).

[4] Section 11002.6 was recently amended by the State of Maine. See Maine Public Law 126, May 18, 1993.

[5] This section was recently enacted by the state of Maine in the same statute that included attorneys within the definition of debt collector. Although it is in a section separate from Section 11002 of the state Act, it deals with a debt collector's rights and obligations when repossessing property for creditors.

name or instituting suits on behalf of others or furnishing legal advice.

Thus, applicant asserts that the state Act is substantially similar to the federal Act, as required by Section 901.2 of the Rule, and arguably provides greater protection than the federal Act with the addition of the several added unfair practices.

Public comment is sought as to whether the additional designated unfair practices contained in subsections 11013.3. I through N affect the level of protection afforded by the state Act as compared to the federal Act.

7. Section 11013.4 of the state Act provides that a debt collector may not report solely in its own name any credit or debt information to a consumer reporting agency as defined by Title 10, Section 1312, subsection 4. The applicant asserts that this additional requirement provides clarification to consumers regarding their credit reports by requiring that debt collectors report debts using the names of the original creditors.

Public comment is sought as to whether the additional requirement in Section 11013.4 of the state Act affects the level of protection afforded by the state Act as compared to the federal Act.

(E) *Validation of Debts and Multiple Debts* (Sections 809 and 810 of the federal Acts; Sections 11014 and 11015 of the state Act).

Applicant states that the Maine provisions are virtually identical to the federal Act and therefore are substantially similar as required by Section 901.2 of the Rule.

(F) *Legal actions by debt collectors* (Section 811 of the federal Act).

Applicant states that since the state Act prohibits debt collectors from filing lawsuits (Section 11013.3.N), no provisions relating to venue are set out in the Maine law because they are not needed. Applicant asserts, therefore, that the lack of a state equivalent to Section 811 of the federal Act (restricting venue in suits brought by collectors) does not result in a diminution of protection afforded Maine consumers.

Public comment is sought as to whether the absence of a venue provision in the state act affects the level of protection afforded by the state Act as compared to the federal Act.

(G) *Furnishing certain deceptive forms* (Section 812 of the federal Act; Section 11016 of the state Act).

Applicant asserts that since the language of both sections is virtually identical, the state Act is substantially similar to its federal counterpart as required by Section 901.2 of the Rule.

Applicant also asserts that in all of the above discussed Maine statutory provisions, except as noted: (1) each of the provisions of the state Act is either identical or substantially similar to Sections 803 through 812 of the federal Act as prescribed by Section 901.2 of the Rule; and (2) no other state laws, including administrative or judicial interpretations, are related to or would have a diminishing effect upon the effectiveness of the state Act.

II. Comparison of Provisions for Enforcement Between Federal Act and State Act

As summarized below, applicant compares Sections 813 and 814 of the federal Act to the state Act.

(A) *Civil liability* (Section 813 of the federal Act; Section 11054 of the state Act).

Applicant states that Section 11054 of the state Act, titled "Civil liability," is identical to those provisions of Section 813 of the federal Act. The state Act establishes private causes of action for aggrieved consumers, while at the same time protecting debt collectors who pattern their activities in conformance with advisory rulings of the state administrator. Remedies under the state Act are identical to those set forth in the federal Act. The one year limitation of action found in the federal Act is mirrored in Section 11054.4 of the state Act.

(B) *Administrative enforcement* (Section 814 of the federal Act; Sections 11040, 11051, 11053 and Subchapter III of the state Act, Licensing and Administration).

1. Applicant states that much of the regulatory authority of Maine's Bureau of Consumer Credit Protection, the relevant state agency, is derived from the licensing powers granted in the state Act. To the extent that the state agency is held responsible not only for the initial licensing, bonding and safety and soundness of collection companies, but also for the subsequent management of debt collectors if they become financially unsound, the state Act arguably provides greater protection to consumers than the general enforcement provisions of Section 814 of the federal Act, since the federal Act does not provide licensing authority. Additionally, state law specifically provides for the investigation of practices and examination of records of collectors by state examiners. State law also permits assessing charges for expenses incurred pursuant to these examinations.

Public comment is sought as to whether the provisions for licensing and administration in Subchapter III of the state Act affect the level of protection afforded by that Act as compared to the federal Act.

2. Sections 11051 and 11040 of the state Act provide for license revoking authority and criminal penalties for operation without a debt collector's license. The federal Act grants no licensing authority to the Commission.

Section 11053 of the state Act authorizes the Superintendent for Consumer Credit Protection, acting through the Attorney General of Maine, to bring an action for civil penalties, not to exceed $5,000, against any person who willfully violates the state Act. No civil penalty pursuant to the state Act may be imposed for violations of the state Act occurring more than 2 years before the civil action is brought.

Section 814 of the federal Act authorizes the Commission to exercise all its functions and powers under the Federal Trade Commission Act, 15 U.S.C. *et seq.*, to enforce the federal Act. A violation of the federal Act constitutes an unfair or deceptive act or practice in violation of the Federal Trade Commission Act. The Federal Trade Commission Act authorizes a civil penalty of up to $10,000 for each violation of the federal Act done with actual or implied knowledge of that Act. 15 U.C.S. 45(m)(1)(A). Additionally, the Commission is empowered to seek injunctive relief, as appropriate. 15 U.S.C. 53(b).

No remedy under the Federal Trade Commission Act is available for violations occurring more than 5 years before the civil action is brought. 28 U.S.C. 2462.

Public comment is sought as to the level of protection afforded by the enforcement authority granted by Sections 11051, 11053 and 11040 of the state Act as compared to that in the federal Act.

III. Information Regarding the Bureau of Consumer Credit Protection and Its Ability To Administer Maine's Debt Collection Laws

Applicant states that Maine's Bureau of Consumer Credit Protection enforces the state Act as well as Maine's Fair Credit Reporting Act. The Bureau includes an office staff of ten individuals, plus five examiners in the field. It conducts reviews of collection agency practices through a staff of examiners and it licenses collection agencies. It also requires bonding of collection agencies and reviews of the financial posture of collection firms applying for licenses. Staff members are trained to handle consumer complaints and questions from consumers concerning debt collection activities;

thousands of educational consumer brochures are distributed. A Bureau newsletter distributed within Maine and throughout New England chronicles license and enforcement actions.

The agency receives funding through licensing fees, examination reimbursement costs, and other assessments that, when combined, make up approximately $100,000 of the agency's $800,000 total budget.

Public comment is sought as to whether the Maine Bureau of Consumer Credit Protection's ability to administer the state Act affects the level of protection afforded by the state Act as compared to the federal Act.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–11233 Filed 5–9–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement 415]

Program To Conduct Health Consultations and Public Health Assessment Activities

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program for public health agencies to build capacity to conduct health consultations. This program is also intended to provide public health agencies with the capacity to conduct activities, in cooperation with ATSDR, during ATSDR's preparation of public health assessments at sites listed on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) and other sites or facilities within their jurisdictional boundary where a hazardous substance has been released into the environment.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 104(i) (4), (6) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i) (4), (6) and (15)], and the Resource Conservation and Recovery Act (RCRA), as amended (Hazardous and Solid Waste Amendments of 1984) [42 U.S.C. 6939a (b) and (c)].

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance is limited to official health departments of States or their bona fide agents or instrumentalities which have fifteen or less sites listed or proposed for listing on the National Priorities List (NPL). This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Approximately $178,000 will be available in FY 1994 to fund an estimated 3 awards. It is expected that the average new award will be $60,000, ranging from $40,000 to $80,000. It is expected that the awards will begin on or about September 29, 1994, and will be made for a 12-month budget period with a 3-year project period. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this program is for public health agencies to build capacity, in coordination with ATSDR, to conduct health related activities under CERCLA and RCRA. This includes conducting health consultations, providing public health advice and information, and coordinating public health activities during ATSDR's preparation of public health assessments at sites listed on the CERCLIS and other sites or facilities within their jurisdictional boundary where a hazardous substance has been released into the environment. This program is directed to public health agencies which have a limited number (15 or less) of proposed or listed sites on the NPL, but have a considerable need to build capacity to address health issues related to hazardous substance releases into the environment within their jurisdictional boundary.

ATSDR currently has a cooperative agreement program which provides funding to support public health assessment activities in twenty-two States. Historically, this program has targeted those States with the greatest number of NPL sites. Because of the number of CERCLIS sites and operational RCRA facilities, there are a number of States which have a clearly demonstrated need to develop a program to address environmental health issues related to hazardous substances. These States have not qualified for funding under the existing program, however, because of the low number of NPL sites within their jurisdictional boundary. This program will enable ATSDR to address this need by providing financial assistance specifically to States with fewer NPL sites but who need to build capacity to address environmental health issues.

Program Requirements

The recipient and ATSDR activities are listed below:

A. Recipient Activities

1. Health Consultations

Conduct health consultations and provide public health advice and information in response to a question or request for information on specific public health issues that occur as a result of actual or potential human exposure to a hazardous substance. Participate in the Health Activities Recommendation Panel (HARP) review of health consultations.

2. Public Health Assessment Activities

Conduct public health evaluation of sites listed on CERCLIS and other sites or facilities within their jurisdictional boundary where a hazardous substance has been released into the environment. These activities may include:

(1) Site evaluations.

(2) Community outreach and interaction activities.

(3) Exposure investigations to further characterize the extent of human exposure for improving public health decision making.

(4) Participating in the HARP review of public health assessments of sites within recipient's jurisdiction.

B. ATSDR Activities

1. Health Consultations

Assist recipient in conducting health consultations in providing public health advice and information in response to a question or request for information on specific public health issues that occur as a result of actual or potential human exposure to a hazardous substance.

2. Public Health Assessment Activities

Assist recipient during public health evaluation of sites listed on CERCLIS and other sites or facilities within their jurisdictional boundary where a hazardous substance has been released into the environment.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Proposed Program—50%

Applicant's ability to address the following:

1. Ability to respond to specific public health issues that occur as a result of actual or potential human exposure to a hazardous substance. (20%)

2. Method described to evaluate and analyze toxicological, community, and environmental health data; community outreach and interaction; and exposure investigations. (20%)

3. Description of HARP participation and involvement in public health meetings and with communities in response to concern about a particular site's impact on public health. (10%)

B. Program Personnel—30%

The extent to which the proposal has described or provided biographical data on the:

1. Appropriate qualifications, experience, leadership ability, and percentage of time principal investigator (or project director) will commit to the project;

2. Appropriate qualifications, experience, and description of how staff will be utilized in relation to the activities to be performed to accomplish the work and their percentage of time to be spent on the project;

3. If contractors are proposed, recipient will adhere to "Third Party Agreements" under "OTHER REQUIREMENTS" of this announcement. Additionally, the following must be provided: name of contractor, method of selection, period of performance, detailed budget and justification (budget not scored).

C. Capability—20%

Description of the applicant's capability to carry out the proposed project and suitability of facilities and equipment available or to be purchased for the project.

D. Human Subjects—(Not Scored)

If the application involves the use of human subjects, the extent to which the applicant discusses all of the issues relevant to protection of the subjects and assesses whether or not subjects are adequately protected.

E. Program Budget—(Not Scored)

The extent to which the budget relates directly to project activities, is clearly justified, and is consistent with intended use of funds.

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, Georgia 30305. This should be done no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.202.

Other Requirements

A. Protection of Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any Native American community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

B. Cost Recovery

CERCLA, as amended by SARA, provides for the recovery of costs incurred for response actions at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e.,

individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient would also maintain documentation that describes the site-specific response actions taken with respect to the site, e.g., contracts, work assignments, progress reports, and other documents that describe the work performed at a site. The recipient will retain the documents and records to support these financial transactions and documentation of work performed, for possible use in a cost recovery case, for a minimum of ten years after submission of a final financial status report, unless there is litigation, claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

C. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the recipient and the third party. The written agreement shall, at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the terms of the grant and/or cooperative agreement, including requirements concerning technical review (ATSDR selected reviewers), ownership of data, and the arrangement for copyright when publications, data, or other copyrightable works are developed under or in the course of work under a PHS grant-supported project or activity.

2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal government purposes.

3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the government's right in that work.

4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the recipient of any part of its responsibility or accountability to PHS under the cooperative agreement. The agreement shall, therefore, retain sufficient rights and control to the recipient to enable it to fulfill this responsibility and accountability.

D. Disclosure

Recipient is required to provide proof by way of citation to State code or regulation or other State pronouncement given the authority of law, that medical information obtained pursuant to the agreement, pertaining to an individual, and therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

Application Submission and Deadline

The original and two copies of application PHS Form 5161-1 should be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E-13, Atlanta, Georgia 30305, on or before July 15, 1994. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or (b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E-13, Atlanta, Georgia 30305, telephone (404) 842-6797. Programmatic technical assistance may be obtained from Edward Skowronski, Program Manager, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E-57, Atlanta, Georgia 30333, telephone (404) 639-6360.

Please Refer to Announcement Number 415 When Requesting Information and Submitting an Application

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: May 5, 1994.

Claire V. Broome,

Acting Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94-11186 Filed 5-9-94; 8:45 am]

BILLING CODE 4163-70-P

Agency for Health Care Policy and Research

Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of May 1994:

Name: Health Care Policy and Research Special Emphasis Panel

Date and Time: May 20, 1994, 8 a.m.

Place: Parklawn Conference Center, Conference Room P, 5600 Fishers Lane, Rockville, Maryland 20857.

Open May 20, 8 a.m. to 8:30 a.m.

Closed for remainder of meeting.

Purpose: This panel is charged with conducting the initial review of health services research training grant applications from educational institutions, individuals, or organizations for Federal support to ensure that highly-trained scientific personnel will be available in adequate numbers and in the appropriate research areas and fields to maintain the nation's health services research agenda.

Agenda: The open session on May 20 from 8 a.m. to 8:30 a.m. will be devoted to a business meeting covering administrative matters and reports. The closed session of the meeting will be devoted to a review of research training grant applications. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Administrator, Agency for Health Care Policy and Research (AHCPR) has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with applications.

This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should contact Mrs. Linda W. Blankenbaker, Agency for Health Care Policy and Research, 2101 E. Jefferson Street, suite 602, Rockville, Maryland 20852, Telephone (301) 594–1449.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: May 3, 1994.

Linda K. Demlo,

Acting Administrator.

[FR Doc. 94–11243 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–90–P

Centers for Disease Control and Prevention

National Committee on Vital and Health Statistics: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 9 a.m.–5 p.m., June 7, 1994; 8:30 a.m.–4:30 p.m., June 8, 1994.

Place: Room 800, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the committee to consider reports from each NCVHS subcommittee; to receive reports from offices of the Department of Health and Human Services; to explore information needs for health reform; and to address new business as appropriate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: May 4, 1994.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–11187 Filed 5–9–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 94F–0055]

Kemin Industries, Inc.; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kemin Industries, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of propionic acid as an antimicrobial agent to control *Salmonella* in animal feed and feed ingredients when used at the rate of 10 kilograms per ton.

DATES: Written comments on petitioner's environmental assessment by July 25, 1994.

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

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center For Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1731.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2229) has been filed by Kemin Industries, Inc., 2100 Maury St., P.O. Box 70, Des Moines, IA 50301. The petition proposes to amend the food additive regulations to provide for the safe use of propionic acid as an antimicrobial agent to control *Salmonella* in animal feed and feed ingredients when used at the rate of 10 kilograms per ton.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 25, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's findings of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 3, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–11269 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Oncologic Drugs Advisory Committee

Date, time, and place. June 7, 1994, 8 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 1, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1)

Investigational new drug application (IND) 37–761, Tamoxifen Breast Cancer Prevention Trial, National Surgical Adjuvant Breast and Bowel Project; and (2) new drug application (NDA) 20–388, Navelbine® for injection (vinorelbine tartrate, Burroughs Wellcome Co.), for treatment of patients with metastatic breast cancer who have failed standard chemotherapy for metastatic disease and for patients with metastatic breast cancer who have relapsed within 6 months of anthracycline-based adjuvant therapy.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 4, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–11268 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–01–F

Pesticide Residue Monitoring Data Base for Fiscal Year 1992; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Fiscal Year (FY) 1992 pesticide residue monitoring data on computer diskettes. This is the first annual comprehensive compilation and public release of FDA monitoring data for pesticide residues in foods. The agency is making the information available on computer diskettes to facilitate its dissemination to interested persons.

ADDRESSES: Pesticide residue monitoring data on computer diskettes may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield VA 22161. Orders must reference NTIS order number PB94–500899 and include a payment of $140.00. Payment may be made by check, money order, charge card (American Express, VISA, or MasterCard), or by billing arrangements made with NTIS. Charge card orders must include the charge account number and expiration date. For telephone orders or further information on placing an order call NTIS at 703–487–4650.

FOR FURTHER INFORMATION CONTACT: Marcia G. Houston, Center for Food Safety and Applied Nutrition (HFS–308), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–205–4152.

SUPPLEMENTARY INFORMATION: FDA is making available its FY 92 pesticide residue monitoring data as a set of six personal computer diskettes. The data base includes FDA pesticide monitoring coverage and findings for FY 92 by country/food product/pesticide combination. The data base is accompanied by a search program and report formats, written in dBase III+. Each year FDA receives numerous requests for these data. FDA has determined that it will facilitate dissemination of these data to interested persons if the agency provides for their general availability in a standardized diskette. A user's manual will be provided that contains installation instructions and describes the structure and content of the data base.

Dated: April 29, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–11270 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPO–125–N]

Medicare and Medicaid Programs; Medicare-Medicaid Coverage Data Bank Requirements: Preliminary Guidance

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

ACTION: Notice.

SUMMARY: This notice informs the public about section 1144 of the Social Security Act, which is self-implementing, and provides preliminary guidance to employers who are required to report information about all individuals covered by group health plans to a newly established Medicare-Medicaid Coverage Data Bank. Information in the data bank will be

used to help identify situations where employer group health plans are responsible for making primary payments for services received by Medicare or Medicaid beneficiaries. This notice provides: information on the background and legislative authority for the data bank; definitions of key terms; reporting requirements; the identity of entities that are required to, or may, report; reporting dates; penalties for noncompliance; and methods of reporting.

DATES: Employers must report this information for each calendar year beginning January 1, 1994, and before January 1, 1998. Reports for calendar year 1994 must be filed no later than February 28, 1995. Reports for future years must be filed no later than the end of February of the following year.

ADDRESSES: *Comments:* Written requests for information or comments on provisions included in this notice should be addressed as follows:

For all aspects of this notice other than methods of reporting: Mr. William Zavoina, Bureau of Program Operations, 367 Meadows East Building, 6300 Security Boulevard, Baltimore, MD 21207, (410) 966–5882 and 966–9188 (faxes).

For methods of reporting: Mr. John Van Walker, Bureau of Data Management and Strategy, 1705 Building, E–2, 6300 Security Boulevard, Baltimore, MD 21207, (410) 966–6371 (faxes).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 275–6802. The cost for each copy is $4.50. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Van Walker, (410) 966–6347, Methods of reporting; William Zavoina, (410) 966–7461, All other issues.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, section 1862(b) of the Social Security Act (the Act) provides that there are circumstances under which other third party payers, such as automobile medical, all forms of no-fault and all forms of liability insurance, worker's compensation, and certain group health plans, are primary payers to Medicare. Section 1862(b) of the Act also requires that HCFA obtain from the Internal Revenue Service information concerning working beneficiaries and working spouses of beneficiaries and determine whether they have health insurance through their own or their spouse's employers. Under the Medicaid program, section 1902(a)(25) of the Act, States must use all reasonable methods to ascertain the availability of third parties who are legally liable to pay for the medical care of Medicaid recipients.

Section 13581 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) added a new section 1144 to title XI of the Act. This section requires the Secretary of HHS to establish a Medicare-Medicaid Coverage Data Bank. Under this section, employers having or contributing to group health insurance plans must report annually to the Secretary certain information, including the following: the name and taxpayer identification number (TIN) of the electing individual; the type of group health plan elected; the name, address, and identification number of the group health plan; the name and TIN of every other person covered as a result of the electing individual's election to have group health plan coverage; the period during which such coverage is elected; and the name, address, and TIN of the employer. Employers must report this information for each calendar year beginning January 1, 1994, and before January 1, 1998.

The data bank was established to further the purposes of section 1862(b) of the Act in the identification of, and collection from, third parties responsible for payment for health care items and services furnished to Medicare beneficiaries and in the identification of, and the collection from, third parties responsible for the reimbursement of costs incurred by any State plan under title XIX with respect to Medicaid beneficiaries, upon request by the Medicaid State agency administering the plan.

The Secretary must establish fees for services provided under section 1144 of the Act to cover the administrative costs to the data bank of providing the services. (These fees will not affect employers or other public parties and thus are not discussed in this notice.)

The law limits disclosure of information by the Secretary under rules similar to those of section 6103(a) and (p) of the Internal Revenue Code of 1986 and provides for penalties for unauthorized willful disclosure. The Secretary is authorized, until September 30, 1998, to disclose any information in the data bank, obtained pursuant to section 6103(l)(12) of the Internal Revenue Code 1986 and the data bank provisions. In addition, the Secretary is authorized, until September 30, 1998, to disclose any other information in the data bank to the Medicaid State agency (as described in section 1902(a)(5) of the Act), employer, or group health plan solely for the purposes for which the data bank was established.

The law also provides for penalties for failure to report required information as described in part II of subchapter B of chapter 68 of the Internal Revenue Code of 1986.

Section 1144 of the Act defines several terms as well. These are Medicare beneficiary, Medicaid beneficiary, group health plan, TIN, electing individual, and employer.

HCFA, acting on behalf of the Secretary, is carrying out the statutory provisions relating to the Medicare-Medicaid Coverage Data Bank.

The provisions of section 1144 of the Act discussed in this notice are self-implementing. We are publishing this notice to provide general guidance to employers and other interested parties as soon as possible. We plan in the future to publish additional guidance as necessary. Employers and other interested parties may rely on the guidance provided in this notice in planning the processes and procedures that they will use to comply with the data bank requirements.

We are recommending that the Congress enact legislation that delays implementation for 18 months. This proposed schedule will allow us to work with Congress and the business community to ensure that the data bank is consistent with health care reform. Although we are recommending a delay, employers should continue to comply with the existing data bank provisions in the absence of legislative changes.

II. Reporting Requirements

Key Definitions

For purposes of this notice, the following definitions apply.

An "employer" is defined as any entity who has, or contributes to, a group health plan, with respect to which at least one employee of such employer is an electing individual. Included in the definition of an employer are State and local

governments, and religious and charitable organizations.

An "electing individual" is defined as an individual associated, or formerly associated, with the employer in a business relationship and who elects coverage under the employer's group health plan. This includes former employees, retirees, franchisees and their employees, contractors and their employees, and employees covered as a result of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) continuation of health care coverage requirements. Also included in the definition of an electing individual are "guest workers," who are individuals who have come to the United States from other countries. Excluded from the definition are employees who provide domestic services in the home of an employer and who receive less than a specified amount in cash remuneration for those services in a quarter. Currently, the specified amount is $50.

A "group health plan" is defined as a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization, to provide health care (directly or otherwise) to the employees, former employees, employer, others associated or formerly associated with the employer in a business relationship, or their families. This includes those group health plans that cover only a limited number of services. Also included in this definition are multiple employer plans, Taft-Hartley trusts, and other multiemployer health and welfare benefit trusts to which an employer contributes. Also included are group health plans sponsored by an employer to which the employer does not contribute ("employee-pay-all" plans).

A "Medicare beneficiary" is an individual who is entitled to benefits under part A, or enrolled under Part B, of title XVIII of the Act, except that individuals 65 years of age or older who qualify solely for Medicare Part A benefits on the basis of paying premiums are excluded for purposes of the data bank provisions.

A "Medicaid beneficiary" (also referred to as a Medicaid recipient) is an individual entitled to benefits under a State plan for medical assistance under title XIX of the Act. The definition includes State plans operating under a Statewide waiver under section 1115, "Demonstration Projects." All States and territories have such a Medicaid program.

A "TIN," or tax identification number, is the social security number of an individual and the employer identification number of an employer.

Required Information

Each employer, directly or indirectly, must provide or make a reasonable good faith effort to provide the information summarized below. The information must be provided for each calendar year beginning on or after January 1, 1994 and before January 1, 1998. When an employer is unable to provide all the information specified below with respect to an electing individual, the employer must provide all available information and explain the reasons for the failure to provide the missing information.

(1) The name and TIN of the electing individual.

(2) The type of group health plan coverage (single or family) elected by the electing individual.

(3) The name, address, and identifying number of the group health plan elected by such electing individual. This means the name and address of the group health plan elected by the electing individual and the identification number that the employer uses to identify that group health plan; and the name and address of the entity that processes claims on behalf of the group health plan and the identification number used by that entity to identify the group health plan.

(4) The name and TIN of each other individual covered under the group health plan pursuant to such election. This means each other covered individual covered for some portion of the calendar year. The employer is not obligated to report TINs of infants under one year of age at the end of the calendar year for which a report will be filed and those prohibited by law from having a social security number, such as dependents of migrant farm workers who are not U.S. citizens.

(5) The period during which such coverage is elected. This means the actual dates that the electing individual had coverage under the group health plan.

(6) The name, address, and TIN of the employer.

The employer's report with respect to each electing individual must include the required information on all group health plans of or contributed to by the reporting employer under which the electing individual has elected coverage during the calendar year and all entities that processed claims on behalf of the group health plans during any period of the calendar year.

An employer is expected to obtain the name and TIN of the electing individual (item 1), the type of coverage (item 2), the plan and claims processing entity information (item 3), the coverage period information (item 5), and the employer information (item 6). When the employer does not provide the names and TINs of other covered individuals, an employer is deemed to have made a reasonable good faith effort to provide the information with respect to the name and TIN of each other individual covered by the group health plan (item 4) with respect to the reports for a specified calendar year if the employer can prove that it has established a systematic method to obtain the necessary information that includes both (i) a documented initial effort to obtain the necessary information from the electing individual and (ii) a documented follow-up effort if the electing individual does not respond to the initial effort.

Reporting Entities

The data bank provisions require employers to provide the required reports. Section 1144(c)(1)(B) of the Act contains a special rule that permits an employer to satisfy the reporting requirement if the report is made in accordance with section 101(f) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1021). This conforming amendment to ERISA, enacted by section 4301 of OBRA 93, imposes certain obligations on plan sponsors, plan administrators, insurers, third party administrators, and any other persons who, under the plan, maintain the information necessary to enable the employer to comply with the data bank reporting requirements (hereafter referred to as "information maintainers"). Upon request of any employer with (a) fewer than 50 employees and (b) a plan other than a multiemployer or multiple employer plan, the information maintainer must provide the required information directly to the data bank. Upon request of an employer with (1) any number of employees and (2) a multiemployer or multiple employer plan, an information maintainer must provide the required information, at the option of the information maintainer, to the data bank or the employer. In any other case, the information maintainer must provide the required information, at the option of the employer, to the data bank or to the employer.

The data bank will also accept required information from entities other than information maintainers who act as agents of the employer for the purpose of providing information to the data bank.

Dates of Reporting

Reports for calendar year 1994 must be filed no later than February 28, 1995. Reports for future years must be filed no later than the end of February of the following year.

Penalties for Failure to Report

Under the Act, HCFA may impose certain penalties described in the Internal Revenue Code when there is a failure by an employer, other than a governmental entity, to report. The penalties are those otherwise associated with a failure to file a correct informational return with the Internal Revenue Service. The current base penalty is $50 for each failure associated with a report with respect to a single individual. The current potential maximum base penalty for any employer is $250,000. The penalty is increased in the case of intentional disregard of the reporting requirement. The penalty is not imposed if it can be shown that the failure is due to reasonable causes.

In determining whether to impose these penalties in a particular case, we will consider all attendant circumstances, including the nature of the failure and the employer's reasonable good faith efforts to obtain and provide the required information.

As previously described, there is a special rule at section 1144(c)(1)(B) of the Act that permits some employers to satisfy data bank reporting obligations through a filing in accordance with section 101(f) of ERISA. Section 4301(c)(2) of OBRA 93, enacted as a conforming amendment to section 502(c) of ERISA, authorizes the Secretary of Labor to assess a civil penalty of not more than $1000 on information maintainers for each failure to provide information to the data bank or the employer as provided in section 101(f)(1) of ERISA. A failure relates to specific information deficiencies with respect to a single electing individual. These provisions and their implementation are the responsibility of the Secretary of Labor.

We will not impose a penalty under the data bank provisions upon an employer if an information maintainer has the responsibility to provide complete and accurate information to the data bank, or if the failure of the employer is attributable to the failure of an information maintainer to provide complete and accurate information to the employer, unless the failure of the information maintainer results from the failure of the employer to provide complete and accurate information to the information maintainer.

We will impose penalties as described above upon an employer if the employer's agent (other than an information maintainer) fails to provide the requisite information to the data bank.

Methods of Reporting

OBRA 93 specifically charges us with minimizing the burden of reporting on employers. We are therefore providing for at least three methods for filing data bank reports. We will make available scannable paper forms and pre-formatted diskettes upon request by employers and publish the electronic format to be used by employers submitting reports on magnetic cartridges. We may establish limitations on employer choices based on the number of electing individuals for whom reports must be filed by an employer, information maintainer, or other entity serving as an agent of the employer in any reporting year. All reports will be sent to a single location that we will designate later this year. Additionally, we will designate a coding system to permit employers to explain certain data consistency and completeness problems when filing data bank reports and thereby greatly reduce the need for us to contact employers later concerning reporting irregularities.

Additional information on methods of reporting for 1994 will be furnished to employers if the Congress does not delay implementation as we have suggested.

III. Collection of Information Requirements

This document contains information collection requirements that must be approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504). We are publishing our estimate of the burden that this information collection activity will place on reporting entities in a separate **Federal Register** notice in accordance with our standard procedure pertaining to information collection requirements submitted to OMB for approval. That notice invites interested parties to comment on the estimate by writing to the address provided.

IV. Impact Analysis Statement

Executive Order 12866 (E.O. 12866) requires us to submit to the Office of Management and Budget (OMB) for review any regulatory action that is identified as economically significant; that is, may 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.

In addition, we generally prepare a flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare an impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We recognize that the collective costs of complying with the requirements outlined in this notice may meet the $100 million threshold of E.O. 12866. The costs associated with this notice are the result of the statute and not established by any discretionary requirements imposed by HCFA. However, due to the economic significance of the provisions, we have submitted this notice to OMB for review and are soliciting comments on the costs and burdens associated with data bank compliance. When the final guidance is issued, a final analysis of the costs and benefits of the data bank will be made available.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773 Medicare—Hospital Insurance Program; and No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 14, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–11345 Filed 5–9–94; 8:45 am]

BILLING CODE 4120–01–P

Department of Health and Human Services

Health Resources and Services Administration

[PN 2217]

RIN 0905–ZA43

Availability of Funds for Grants for School Health Services and Health Education/Promotion for Homeless and At-Risk Children and Youth, and for School Health Staff Development

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $5.75 million under the appropriation for fiscal year (FY) 1994, for HRSA's new school health initiative: the Healthy Schools, Healthy Communities Initiative. The Bureau of Primary Health Care (BPHC) and the Maternal and Child Health Bureau (MCHB) will jointly manage this initiative within HRSA.

Under this initiative, approximately $3.25 million is available for discretionary grants to provide school-based primary health care services to homeless and at-risk children and youth. This money was appropriated under Public Law 103–112, the FY 1994 Labor/HHS Appropriations Act, and is included as part of the funding for the Outreach and Primary Health Services for Homeless Children Program. The grants will be awarded under section 340(s) of the Public Health Service (PHS) Act, 42 U.S.C. 256.

The remainder of the funding for the initiative, approximately $2.5 million, is available through MCHB's Special Projects of Regional and National Significance (SPRANS) as authorized under section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2). One million dollars of the SPRANS money is for health education/promotion services provided to homeless and at-risk children and youth through school-based health centers. The remaining $1.5 million is available for school health staff development grants.

The $5.75 million for the Healthy Schools, Healthy Communities Initiative will be awarded through two grant programs. First, $4.25 million is available for grants to provide school-based primary health care services and health education/promotion for homeless and at-risk children and youth. Second, $1.5 million is available for grants for school health staff development.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. The Healthy Schools, Healthy Communities Initiative will contribute to meeting the objectives cited for children and youth, particularly children and youth who are homeless, at-risk, in low-income families, and/or minorities. In addition, the initiative will contribute to meeting three of the six National Education Goals included in the Goals 2000: Educate America Act. The initiative will address Goal 1 which states: by the year 2000, all children in America will start school ready to learn; Goal 2 which states: by the year 2000, the high school graduation rate will increase to at least 90 percent, and Goal 6 which states: by the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning. In addition, this program is consistent with many of the elements of the proposed Health Security Act, particularly Title III, Subtitle G. Potential applicants may obtain a copy of Healthy People 2000 (Full Report—Stock No. 017–001–00474–0 or Summary Report—Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC. 20402–9325 (telephone 202–783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

DUE DATES: To receive consideration, applications for the health services/health education grant and the staff development grant are due July 15, 1994. Applications are considered as having met the deadline if they are: (1) Received on or before the established deadline date; or (2) sent on or before the established deadline date and received in time for orderly processing. Applicants should obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service or obtain a legibly dated U.S. Postal Service postmark. . Private metered postmarks will not be accepted as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant.

ADDRESSES FOR HEALTH SERVICES/EDUCATION GRANTS: Application kits and additional guidance (Form PHS 5161–1 with revised face sheet DHHS form 424, as approved by the OMB under control number 0937–0189) for the health services/health education grants may be obtained from, and completed applications should be mailed to: Alice H. Thomas, Grants Management Officer (GMO), Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland, 20814. The telephone number is (301) 594–4260 and the fax number is (301) 594–4073. Application kits will be distributed up to two weeks before the application due date. The Grants Management staff is available to provide assistance on business management issues.

ADDRESSES FOR STAFF DEVELOPMENT GRANTS: Application kits and additional guidance (Form PHS 5161–1 with revised face sheet DHHS form 424, as approved by the OMB under control number 0937–0189) for the staff development grants may be obtained from, and completed applications should be mailed to: John Gallicchio, Grants Management Officer, Maternal and Child Health Bureau, Health Resources and Services Administration, Parklawn Building, Room 18–12, 5600 Fishers Lane, Rockville, Maryland, 20857. The telephone number is (301) 443–1440 and the fax number is (301) 443–6686. Application materials will be available after April 1, 1994.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Jane Martin, Program Director, School Health Program, Perinatal and Child Health Branch, Division of Programs for Special Populations, Bureau of Primary Health Care, 4350 East-West Highway, Bethesda, Maryland 20814, (301) 594–4470, fax (301) 594–4989, or contact Linda Johnston, Co-Director, School Health Initiative, Adolescent Health Branch, Division of Maternal, Infant and Child Health, Maternal and Child Health Bureau, Parklawn Building, room 18A–39, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4026, fax (301) 443–1296.

SUPPLEMENTAL INFORMATION

School-Based Health Services and Health Education/Promotion Grants for Homeless and At-Risk Children and Youth

Grant Amounts: Approximately $4.25 million is available for grants to provide school-based health services and health education/promotion to homeless and at-risk children and youth. Of the $4.25 million, $3.25 million is for primary and preventive health care services; $1.0 million is for health education/promotion purposes. Each grantee will

only receive one grant award that will include funds for both health services and health education/promotion.

Number of Awards: Approximately 15–20 awards will be made, with a total possible maximum of $285,000 for each grant. Awards will range from $100,000 to $220,000 for school-based health services and from $40,000 to $65,000 for school health education/promotion. Awards will be made for a one-year budget period and a three-year project period.

Match Requirements: Only grantees that are hospitals are required to contribute (directly or through donations from public or private entities) not less than $1 in non-Federal contributions for each $1 of Federal funds provided in the health services portion of the grant. Non-Federal contributions may be in cash or in-kind, fairly evaluated, including plant, equipment, or other services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions. It is important to note that this match does not apply to the health education/promotion portion of the grant.

Eligible Applicants: An eligible applicant is a community-based primary health care provider. Eligible health care providers are community-based public or nonprofit private entities that have a history of providing primary health services to a substantial number of homeless, at-risk, or medically underserved children and youth in the community, e.g., health care for the homeless centers, community and migrant health centers, local health departments, public housing primary care centers, and children's hospitals.

The provider must have established a partnership with a school or school district, but only the health care provider is the applicant. Together the health provider and school must have established a cooperative arrangement with at least one community organization that will supplement, expand, and enrich the services provided through the school-based health center. Applicants are encouraged to establish as many cooperative arrangements as are desirable and feasible (e.g., with Health Care for the Homeless projects, homeless shelters, soup kitchens, other community organizations that serve the homeless, community mental health centers, social service agencies, local youth organizations, and community service organizations).

Grantees must have an agreement with a State under its Medicaid program, title XIX of the Social Security Act (if they provide services that are covered under the title XIX plan for the State), and be qualified to receive payments under the agreement. This requirement may be waived if the organization does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program. It is expected that grantees will maximize third party reimbursement to which they are entitled, including Medicaid.

Grants will be made for a variety of arrangements, including programs in rural and urban areas. Grants will be awarded for programs in elementary schools, middle schools or junior high schools, high schools, or a combination of schools. Funds are not available to enhance existing school-based health centers. The funds are intended to be used to establish new school-based health centers that offer comprehensive primary care services. An applicant that currently operates a school-based health center may use these funds to establish a new center in another school.

Other Requirements: Restrictions on the use of grant funds are as follows: (1) Grant funds may not be used to pay for inpatient services, except for residential treatment for substance abuse provided in settings other than hospitals; (2) grant funds may not be used to make cash payments to intended recipients of primary health, substance abuse or mental health services; and (3) grant funds may not be used to purchase major medical equipment or to purchase or improve real property (other than minor remodeling of existing improvements to real property, which is allowable for rebudgeting without prior approval for amounts up to a cumulative maximum of $25,000). The Secretary may waive this restriction upon request by an applicant demonstrating that the purposes of the project cannot otherwise be carried out.

The grantee must, directly or through contract, provide services without regard to ability to pay for the services. If a charge is imposed for the delivery of services, such charge: (1) Will be made according to a schedule of charges that is made available to the public; (2) will not be imposed on any individual with an income less than the official poverty level (the nonfarm income official poverty line defined by the Office of Management and Budget); and (3) will be adjusted to reflect the income and resources of the individual involved.

Program Services: Grants will be awarded to school-based health center programs that will offer comprehensive primary care and health education/promotion services including, but not limited to: (1) Outreach and other access-related services including care coordination/case management, translation, and transportation, as needed; (2) diagnosis and treatment of acute and chronic conditions; (3) laboratory services necessary to diagnose and treat acute and chronic conditions (these may be provided directly, through contract arrangements, or through formal referrals); (4) preventive health services, including health screenings and immunizations; (5) mental health and counseling services, and necessary referrals for child abuse prevention and treatment, specialized mental health services, social services, and substance abuse treatment; (6) preventive dental services (these may be provided directly, through contract arrangements, or through formal referrals); (7) a school health education/promotion program; and (8) arrangements for coverage during non-school hours. The health education/promotion activities should build on and be integrated with existing health education/promotion activities and should address the unmet needs of students.

Target Populations: This program is designed to serve children in kindergarten through the twelfth grade who are homeless or at imminent risk of homelessness, including children in unstable housing situations or who have incomes or family incomes below 200% of the federal poverty level (the nonfarm income official poverty line defined by the Office of Management and Budget).

While the school-based health center will target services to those children described above, the school-based health center must serve all students in the school who wish to enroll in the center.

Data and Management Information System (MIS) Requirements: The funding agencies will provide the software to be used for the acquisition of data needed for program monitoring and the national evaluation. Purchase of appropriate hardware to run the software will be an allowable expense under the grant. The system to be employed will meet very specific requirements to be further articulated in the program guidance. Broad data categories include, but are not limited to, demographics, insurance status, diagnoses, services provided, referrals, and follow-up. The data requirements

for the national evaluation are subject to OMB approval and will not be implemented until approval is obtained.

Criteria for Evaluation: Applicants will be evaluated on their plan for health services and health education/promotion based upon the following criteria:

• Need: Degree of need for school-based health services, which must include but not be limited to the following indicators: (1) Estimate of the number of homeless children and children at imminent risk of homelessness in the school and community, with estimation method specified; (2) level of poverty in school and community, including school receipt of Chapter 1 funds, and in particular, school designation as a Chapter 1 school-wide program; (3) the number of children who are eligible for free or reduced price lunches; (4) degree to which the population in the community is medically underserved; (5) presence of significant barriers to health care for students in the community (e.g., lack of transportation, language); and (6) indicators of health risks for school-aged children and youth such as intentional and unintentional injuries, violence, alcohol and other drug abuse, sexually transmitted disease, adolescent pregnancy, juvenile justice involvement, and high proportion of children with special health care needs;

• Proposed Plan and Project Description: The extent to which the applicant has: (1) Demonstrated its capability to successfully implement and administer the proposed plan; (2) specified appropriate and measurable goals and objectives that address the needs of the target population identified through a completed community needs assessment; (3) demonstrated the feasibility of implementing the program based on the time frame proposed; (4) described an appropriate multidisciplinary team of health professionals who will deliver services; (5) provided for an arrangement between the health care provider and the school that specifies how referrals and off site treatment will be handled and, where appropriate, specified the role of the school nurse, school psychologist, and other school personnel in the staffing of the clinic and the provision of health services to students; (6) outlined a suitable quality assurance program for services provided under the grant; (7) specified administrative procedures for fiscal control and fund accounting procedures which provide for reasonable financial administration of Federal and non-Federal funds; (8) specified plans for and evidence of financial ability to continue program beyond project period; (9) included health education/promotion activities that will adequately address unmet health education needs of students; (10) integrated health education/promotion services with new and existing school health services, health education/promotion programs, and other education programs, if any, (e.g., counseling, special education, services provided by a school nurse, including those provided under IDEA, and activities funded under the Drug Free Schools and Communities Act); and (11) specified health education/promotion activities that complement the existing health education curriculum (the activity should target those health education/promotion needs which are identified as top priority based upon the needs assessment);

• Project Collaboration, Coordination and Community Support: (1) The extent to which the health provider and school have established cooperative arrangements with community groups that will supplement, expand, and enrich the services provided through the school-based health center; (2) the degree to which the applicant has and will continue to work with other Federal, State and local programs (particularly State health agencies and their Primary Care Cooperative Agreement staff and the Maternal and Child Health (Title V) staff, local schools, mental health service agencies, substance abuse service agencies, and Medicaid); (3) the extent of community support, particularly among families, caregivers and the students themselves; (4) the extent of support from school personnel and organizations (e.g., principal, school board, school nurses, PTA, Student Council); and (5) evidence of willingness of collaborating and/or supporting organizations to contribute resources, both cash and in kind, for the school-based health center program;

• Budget: Adequacy and appropriateness of the proposed budget (i.e., detailed projections of revenue and costs in accordance with grant application instructions), including the health education/promotion budget subsection;

• Outcome and Evaluation: (1) The strength of the self-evaluation plan to monitor the progress of the program and to assess and document outcomes of the program; and (2) evidence of applicant's commitment to participate in a national evaluation and use the software provided by the funding agency.

SUPPLEMENTAL INFORMATION

School Health Staff Development Grants

Background: The purpose of these grants is to build capacity at the State and local levels, consistent with the goals of the proposed Health Security Act, in order to provide staff development for local education agency and local health agency personnel involved in school-based health centers or in school-linked programs. Proposed programs could include training for the following types of staff: health care providers, allied health professionals, and health educators. Emphasis should be placed on training to work with a multidisciplinary team.

Grant Amounts and Number of Awards: There will be approximately $1.5 million available for up to 10 school health staff development grants for Fiscal Year 1994, to enhance the operation of school-related health services. Awards will be made for a one-year budget and project period.

Eligible Applicants: Eligible applicants are State health agencies or public and private nonprofit institutions of higher learning. The applicant must demonstrate full partnership between the State health agency and the institution of higher learning and, as appropriate, other community organizations and/or professional associations.

Criteria for Evaluation: Grantees will be evaluated based upon the following criteria:

• Need: Degree of need for school health program staff development as identified in a needs assessment;

• Proposed Plan: The extent to which the proposed plan has: (1) Specified appropriate goals and objectives (e.g., specify knowledge expected to be learned to upgrade skills and competencies to work in school health settings); (2) provided a description of proposed program to provide staff development for individuals who work in school health settings; (3) utilized existing staff development programs, where appropriate (e.g., the Interdisciplinary Adolescent Health Project(s) and the Center for Continuing Education in Adolescent Health supported by funds from MCHB); and (4) demonstrated the soundness of the project's proposed management, as assessed by the qualifications of the staff of the proposed project, the applicant's facilities and resources, and the capability to fulfill the proposed goals and objectives to meet staff development needs;

• Budget: Adequacy and appropriateness of proposed budget;

• Outcome and Evaluation: (1) The adequacy of the plan to monitor the progress of the program and to assess and document outcomes of the program; and (2) evidence of commitment to participate in a national evaluation.

Other Award Information

The programs under the Healthy Schools, Healthy Communities Initiative are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State point of contact (SPOC) in the State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate deadline dates. The Health Resources and Services Administration does not guarantee that it will accommodate or explain its responses to State process recommendations received after the due date. (See "Intergovernmental Review of Federal Programs", Executive Order 12372, and 45 CFR part 100, for a description of the review process and requirements.)

These programs are subject to the Public Health System Reporting Requirements approved by the Office of Management and Budget (0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit certain information to the head of the appropriate State and local health agencies in the area(s) to be impacted. This information should be submitted no later than the Federal application receipt due date. The information includes:

a. A copy of the face page of the application (SF 424).

b. A summary of the project PHSIS, not to exceed one page, which provides:

1. A description of the population to be served.

2. A summary of the services to be provided.

3. A description of the coordination planned with the appropriate State and local health agencies.

The OMB Catalog of Federal Domestic Assistance numbers for the HRSA Healthy Schools, Healthy Community Initiative are 93.151 and 93.110.

Dated: March 18, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–11143 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Maternal and Child Health Community Integrated Service Systems Set-Aside Program

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Advance notice of application deadline date.

SUMMARY: The Health Resources and Services Administration (HRSA), in collaboration with the Administration for Children, Youth and Families, will provide funding during fiscal year 1994 for Maternal and Child Health Community Integrated Service Systems (CISS) Set-Aside Program grants authorized under section 502(b)(1)(A) of Title V of the Social Security Act. In fiscal year 1994, funding for new CISS projects will be focused on development of home visiting programs which carry out the intent of the "Home Visiting Services for At-Risk Families" Program, as authorized by Title V of the ADAMHA Reorganization Act (Pub. L. 102–321). The purpose of this announcement is to give early notice to potential applicants of the amount of funding and application deadline date.

FOR FURTHER INFORMATION CONTACT: Potential applicants may contact the Chief, Grants Management Branch, Maternal and Child Health Bureau, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440 for application information and other information concerning this program.

SUPPLEMENTARY INFORMATION: A Notice of Availability of Funds will be published in the **Federal Register** for this program, announcing program provisions, priorities, and review criteria.

Program	Application deadline	No. of awards (est.)	Funds available (est.)
Community Integrated Service Systems (CISS)	June 30, 1994	50	$2.5 million.

Dated: May 4, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–11242 Filed 5–9–94; 8:45 am]

BILLING CODE 4160–1500–P

National Institutes of Health

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 22–23, 1994, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 22 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to

attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Roger W. Dahlen at 301–496–4221 two weeks before the meeting.

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 on June 22 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on June 23 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: May 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11156 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Nursing Research; Meeting: National Advisory Council for Nursing Research and Its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Advisory Council for Nursing Research, National Institute of Nursing Research; and its Subcommittees, June 3 and 7–8, 1994, National Institutes of Health, Bethesda, Maryland.

Meetings of the full Council and its Subcommittees will be held at times and places listed below. Attendance by the public will be limited to space available.

The full Council will meet in open session June 7, Building 31C, Conference Room 6, from 1 p.m. to 5 p.m., and on June 8, from approximately 10 a.m. to adjournment. Agenda items will include: The NINR Director's Report, Report from Directors of the Exploratory Centers, Prioritization of the Science for NINR, Post Review Policy Issues Relevant to Grant Review, NACNR Subcommittee Issues, 1994 Nursing Task Force, Nursing Systems Report, NAS Report, Report on Reinventing Government.

Each of the Subcommittees listed below will be held by telephone conference.

The Planning Subcommittee will meet in open session June 3, Building 31, Conference Room 5B03, from 11:30 a.m. to 1 p.m., to discuss long-term and strategic planning and policy issues.

The National Nursing Research Agenda Subcommittee will meet in open session June 3, Building 31, Conference Room 5B03, from 3 p.m. to 5 p.m., to discuss issues related to the National Nursing Research Agenda.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting of the Research Subcommittee June 3, from 1 p.m. to 3 p.m., will be closed to the public, and the meeting of the full Council will be closed on June 8, from 8:30 a.m. to approximately 10 a.m., for the review, discussion, and evaluation of individual grant applications. The 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.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Ernest Marquez, 301–594–7865, in advance of the meeting.

Dr. Ernest Marquez, Executive Secretary, National Advisory Council for Nursing Research, National Institutes of Health, Westwood Building, room 740, Bethesda, Maryland 20892, 301–594–7865, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: May 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11157 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for June and July 1994.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter 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, for the review, discussion, and evaluation of individual research training grant and research center grant applications. The discussions of these applications 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.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892, Telephone: 301–496–7301, FAX: 301–402–0224, will provide a summary of the meeting and a roster of committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Ann Dieffenbach.

Substantive program information may be obtained from each scientific review administrator whose name, room number, and telephone number are listed below each committee.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Carole Latker, room 9A10, Westwood Building, Telephone: 301–594–7758.

Dates of Meeting: June 7–8, 1994.

Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892.

Open: June 7, 8:30 a.m.—9:30 a.m.

Closed: June 7, 9:30 a.m.—5 p.m., June 8, 8:30 a.m.—adjournment.

Name of Committee: Pharmacological Sciences Review Committee.

Scientific Review Administrator: Dr. Irene Glowinski, room 9A18, Westwood Building, Telephone: 301–594–7741.

Dates of Meeting: June 9, 1994.

Place of Meeting: Embassy Suites, Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015.

Open: June 9, 8:30 a.m.—9:30 a.m.

Closed: 9:30 a.m.—adjournment.

Name of Committee: Genetic Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Arthur Zachary, room 9A13, Westwood Building, Telephone: 301-594-7758.

Dates of Meeting: June 13, 1994.

Place of Meeting: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: June 13, 8:30 a.m.—9:30 a.m.

Closed: June 13, 9:30 a.m.—adjournment.

Name of Committee: Minority Access to Research Careers Review Subcommittee.

Scientific Review Administrator: Dr. Richard Martinez, room 9A18, Westwood Building, Telephone: 301-594-7803.

Dates of Meeting: June 16–17, 1994.

Place of Meeting: Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: June 16, 8:30 a.m.—9:30 a.m.

Closed: June 16, 9:30 a.m.—5 p.m., June 17, 8:30 a.m.—5 p.m.

Name of Committee: Minority Biomedical Research Support Review Subcommittee.

Scientific Review Administrator: Dr. Jean Flagg-Newton, room 9A13, Westwood Building, Telephone: 301-594-7708.

Dates of Meeting: July 14–15,1994.

Place of Meeting: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: July 14, 8:30 a.m.—9:30 a.m.

Closed: July 14, 9:30 a.m.—5 p.m., July 15, 8:30 a.m.—adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institute of Health)

Date: May 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–11158 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meetings

Pursuant to Public Law 92–463, notice is hereby given of Subcommittees A and B meetings of the Biological and Clinical Aging Review Committee, and of Subcommittees A and B meetings of the Neuroscience, Behavior and Sociology of Aging Review Committee.

These meetings will be open to the public as indicated below to discuss administrative details and other issues relating to committee activities. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research 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.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Gateway Building, room 2C218, National Institutes of Health, Bethesda, Maryland 20892, (301/496–9322), will provide summaries of the meetings and rosters 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 Scientific Review Administrator listed for the meeting, in advance of the meeting.

Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated below:

Name of Subcommittee: Subcommittee A—Biological and Clinical Aging Review Committee.

Scientific Review Administrator: Dr. Arthur Schaerdel, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Date of Meeting: June 10, 1994.

Place of Meeting: Teleconference call.

Open: June 10—1 to 1:15 p.m.

Closed: June 10—1:15 to 5 p.m.

Name of Subcommittee: Subcommittee B—Biological and Clinical Aging Review Committee.

Scientific Review Administrator: Dr. James Harwood, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Date of Meeting: June 8, 1994.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland.

Open: June 8—8:30 to 9 a.m.

Closed: June 8—9 a.m. to adjournment on June 8, 1994.

Name of Subcommittee: Subcommittee A—Neuroscience, Behavior and Sociology of Aging Review Committee.

Scientific Review Administrators: Dr. Maria Mannarino, Dr. Louise Hsu, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Dates of Meeting: June 14–16, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: June 14—7 to 8 p.m.

Closed: June 14—8 to adjournment on June 16, 1994.

Name of Subcommittee: Subcommittee B—Neuroscience, Behavior and Sociology of Aging Review Committee.

Scientific Review Administrator: Dr. Walter Spieth, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9666.

Dates of Meeting: June 9–11, 1994.

Place of Meeting: Marriott Suites Bethesda, 6711 Democracy Blvd., Bethesda, Maryland 20814.

Open: June 9—8 to 8:45 p.m.

Closed: June 9—8:45 p.m. to adjournment on June 11, 1994.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated May 4, 1994.

Susan K. Feldman,

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Committee Management Officer, NIH.

[FR Doc. 94–11159 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes Of Health

Prospective Grant of Exclusive License: Anti-viral Agents F-ddA and F-ddI Useful in the Treatment of Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent Application SN 07/762,082 (FWC of 07/288,652, CIP of 07/039,402) entitled "Acid Stable Purine Dideoxynucleosides Active Against The Cytopathic Effects Of Human Immunodeficiency Virus" and U.S. Patent Application SN 07/556,713 entitled "2′-Fluorofuranosyl Derivatives And Novel Method Of Preparing 2′-Fluoropyrimidine and 2′-Fluoropurines" and corresponding foreign patent applications to U.S. Bioscience, Inc. of West Conshohocken, Pennsylvania. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license may be limited to the field of treatment of human immunodeficiency virus (HIV) infection in humans using 9-(2,3 dideoxy-2-fluoro-β-Dthreo-pentofuranosyl)-adenine (F-ddA) and 9-(2,3 dideoxy-2fluoro-β-D-threo-pentofuranosyl)-hypoxanthine (F-ddI). This prospective exclusive license may be granted unless

within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Application SN 07/762,082 describes novel acidstable 2-fluoropurine dideoxynucleosides that have been shown to inhibit HIV reverse transcriptase and the cytopathic effects of HIV in vitro and are thus are expected to be useful in the treatment of HIV-infection. These 2-fluoropurine dideoxynucleosides withstand the acidic conditions in the stomach and may be orally administered without the need for antacids. U.S. Patent Application SN 07/556,713 describes an method of synthesis for these compounds.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, suite 325, Rockville, MD 20852–3804. Telephone: (301) 496–7735; Facsimile: (301) 402–0220; Internet: Steve Ferguson%NIHOD601.BITNET@CU.NIH.GOV.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH within sixty (60) days of this notice will be considered. A signed Confidential Disclosure Agreement will be required to receive a copies of the patent applications.

Dated: May 2, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–11161 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–P

Public Health Service

National Toxicology Program; Fiscal Year 1992 Annual Report

The National Toxicology Program (NTP) announces the availability of the NTP Annual Plan for Fiscal Year 1992, solicits comments on it, and urges all interested persons to propose chemicals for possible toxicological evaluation. In the interest of accuracy due to the lateness of publication, the FY 1992 edition has been titled the NTP Annual Report.

The fourteenth edition consists of two parts. First, the NTP Annual Report for Fiscal Year 1992 describes FY 1992 NTP plans in research, applied studies, methods development and validation efforts, as well as resources and FY 1991 program accomplishments. Second, the Review of Current DHHS, DOE, and EPA Research Related to Toxicology lists chemicals being studied by the various DHHS agencies, the Department of Energy, and the Environmental Protection Agency, and describes toxicology research and toxicology methods currently being developed by these agencies.

Background

The National Toxicology Program (NTP) was established within the Public Health Service of the Department of Health and Human Services (DHHS) in November 1978. The continuing broad goals of the NTP are to coordinate and strengthen DHHS basic and applied toxicology research and methods development and validation, and to provide toxicological information for use by health research and regulatory agencies and others in protecting the public health. Overall objectives are to:

- Broaden the spectrum of toxicological information obtained on selected chemicals;
- Increase the numbers of chemicals studied, within funding limits;
- Develop and validate assays and protocols responsive to regulatory needs;
- Communicate Program plans and results to governmental agencies, the medical and scientific communities, and the public.

The NTP coordinates selected toxicology activities of the National Institute of Environmental Health Sciences, National Institutes of Health; the National Center for Toxicological Research, Food and Drug Administration; and the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

Primary program oversight is provided by the NTP Executive Committee, which links DHHS health research institutes and centers with Federal health regulatory agencies to ensure that the basic and applied toxicology research and development activities are responsive to regulatory and public health needs. Agencies represented on the Executive Committee are:

- Agency for Toxic Substances and Disease Registry
- Consumer Product Safety Commission
- Environmental Protection Agency
- Food and Drug Administration
- National Cancer Institute
- National Institute for Occupational Safety and Health
- National Institute of Environmental Health Sciences
- National Institutes of Health
- Occupational Safety and Health Administration

The NTP Board of Scientific Counselors provides scientific oversight, advising the NTP Director and the NTP Executive Committee on scientific content and evaluating the scientific merit and overall quality of NTP science. The members (listed in the 1992 Annual Report) are appointed by the Secretary, DHHS. For the purposes of the Program, the NTP Director reports to the Assistant Secretary for Health.

Scientific activities are divided into four major program areas: carcinogenesis; cellular and genetic toxicology; reproductive and developmental toxicology; and toxicologic characterization. The latter area covers activities in cardiac, immunologic, neurobehavioral, and respiratory toxicologies, and includes programs in chemical disposition, toxicities of AIDS therapeutics, and toxicity of Superfund chemicals. Program and project leaders, along with addresses and telephone numbers, are identified in the 1992 Annual Report.

The chemical nomination and selection process is integral to the effective long-term operation of the NTP with respect to toxicological studies of chemicals using modern techniques and to the development and validation of new assay methods. Thus, the NTP welcomes nominations of chemicals for study from everyone. At a minimum, the nominator should give the name of the chemical or substance, the rationale for the nomination, and recommend the type study(s) to be considered. In addition, it is desirable, but not essential, to supplement each nomination with the following information, if known:

I. Chemical and physical properties.

II. Production, use, occurrence, and analysis data.

III. Toxicology information.

IV. Chemical disposition and structure-activity relationships.

V. Planned or ongoing or recently completed toxicological and environmental studies.

To receive the NTP Annual Report for Fiscal Year 1992, and the FY 1992 Review of Current DHHS, DOE, and EPA Research Related to Toxicology, please write or telephone the NTP Central Data Management, P.O. Box 12233, MD A0–01, Research Triangle

Park, N.C. 27709, (telephone 919/541–3419).

Comments on the FY 1992 NTP Annual Report are requested and welcome. These should be addressed to Dr. Larry Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709, (telephone 919/541–3971).

Dated: May 4, 1994.

Richard Griesemer,

Deputy Director, National Toxicology Program.

[FR Doc. 94–11160 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–P

National Institutes of Health

Regulations Review Plan

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is announcing plans to review its regulations in conjunction with other review initiatives already announced by the Department of Health and Human Services (HHS) to implement Executive Order 12866. The NIH review is intended to determine whether any NIH regulations, including those determined to be "significant" by the Office of Management and Budget (OMB), as defined under E. O. 12866, and those determined to be "not significant" need to be modified to make them more effective, less burdensome, and more in alignment with the President's priorities and regulatory principles. NIH invites the submission of data, information, and ideas by interested individuals and organizations to assist in the review.

DATES: In order to be considered in the review process, comments must be received on or before July 11, 1994.

ADDRESSES: Comments should be sent to Jerry Moore, Regulatory Affairs Officer, Office of Management Assessment, National Institutes of Health, Building 31, Room 3B11, Bethesda, Maryland 20894.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, Regulatory Affairs Officer, telephone (301) 496–4606 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The President issued Executive Order 12866, "Regulatory Planning and Review," on September 30, 1993. The basic purpose of E. O. 12866 is to make regulations less burdensome, more effective, and in greater alignment with the President's priorities and regulatory principles. Section 5 of E.O. 12866 requires that each agency periodically review its existing significant regulations to determine whether these regulations should be modified or eliminated so as to make the agencies' regulatory programs more effective. For the purposes of E. O. 12866, a "significant" regulation means a regulation 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 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 Executive Order 12866.

On January 20, 1994, HHS published a notice in the **Federal Register** (59 FR 3040) describing its plan for implementing E.O. 12866 and for continuing its implementation of the Regulatory Flexibility Act, Public Law 96–354, which requires each agency to review regulations issued by the agency which will have a significant economic impact on a substantial number of entities. Among other things, the HHS plan invites the public, especially those most affected by existing regulations, to submit data, information, and views to assist HHS in its review of regulations issued by the Department including those issued by NIH. NIH will use whatever information is collected by HHS to help identify what reforms are needed to make those regulations which are determined by OMB to be "significant" more effective and less burdensome.

Additionally, NIH believes that in the spirit of the President's efforts to provide a more effective and less burdensome regulatory system it would be beneficial at this time for NIH to also review those regulations which may be determined by OMB to be "not significant." Therefore, NIH invites comments from the public, especially from those most affected by regulations issued by NIH, to help identify opportunities for making all of NIH regulations more effective and less burdensome. Comments will be most helpful when they clearly identify the regulation to which the comment is addressed and specifically explain why and how the regulation imposes unnecessary or disproportionately burdensome demands on those regulated. NIH encourages the submission of information, particularly data concerning the costs of the regulation, that support the comment. NIH also encourages the submission of ideas for more actively involving those most affected by NIH regulations in the planning of regulations before they are formally proposed in the **Federal Register** or in future reviews, including how electronic forums might best be used for the exchange of information among NIH and affected parties; and the submission of ideas for improving the clarity of its regulations.

Careful review of regulations can require a significant amount of time and resources. Therefore, NIH will consider what is practicable and reasonable, given its current resources and other responsibilities and comments made in response to this Notice and HHS's previous Notice, in prioritizing regulations for review, and in establishing long range schedules for beginning and ending reviews. NIH will issue another notice summarizing the information that it receives from the HHS notice concerning "significant" regulations issued by NIH and the comments that it receives from the public concerning regulations determined to be "not significant." At that time, NIH will also set forth more detailed plans for pursuing identified opportunities for making its regulations more effective and less burdensome.

Dated: April 28, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–11162 Filed 5–9–94; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–942–4210–06–P; U–72189; 4–00152]

Proposed Withdrawal; Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 260 acres of public land near St. George, Utah, to protect the Baker Dam Recreation Site. This notice closes these lands for up to two years from surface entry and mining. The lands will remain open to mineral leasing.

DATES: Comments on the proposed withdrawal or request for public meeting must be received on or before August 8, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Utah State Director, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, Utah State Office, (801) 539–4119.

SUPPLEMENTARY INFORMATION: On April 22, 1994, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described land from settlement, sale, location, or entry under the general lands laws, including the United States mining laws (30 U.S.C. ch 2), subject to valid existing rights:

Salt Lake Meridian

T. 39 S., R. 16 W.,
sec. 21, N½SE¼, SE¼SE¼;
sec. 22, SW¼SW¼, W½SE¼SW¼;
sec. 28, N½NE¼.

The area described contains 260 acres in Washington County, Utah.

The purpose of the proposed withdrawal is to protect the recreational values of Baker Dam Recreation Site and the investment of federal funds which have been, and will be expended to develop the site. It is a popular area for fishing, as well as other water-related activities, for local residents of nearby communities, the St. George area, and visitors from Nevada and California.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specific above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Ted D. Stephenson,

Acting State Director.

[FR Doc. 94–11172 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Meeting: Klamath Fishery Management Council Telephone Conference

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of telephone meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public via speaker phones at the locations listed below.

DATES: The Klamath Fishery Management Council will meet via telephone at 1:30 p.m. on Monday, May 23, 1994.

PLACES FOR PUBLIC LISTENING AND COMMENT:

Port of Brookings, 16374 Lower Harbor Road, Brookings, Oregon;
National Marine Fisheries Service—Tiburon Lab, 3150 Paradise Drive, Tiburon, CA;
U.S. Fish and Wildlife Service—Arcata Field Office, 1125 16th Street, Room 209, Arcata, California;
U.S. Fish and Wildlife Service—Klamath River FRO, 1215 South Main Street, Room 214, Yreka, California;
Oregon Department of Fish and Game, 2501 S.W. 1st Avenue, 3rd Floor, Portland, Oregon;
Yurok Tribal Office, Hwy. 101 (between Don's Gas Station and Fortains Trailer Park), Klamath, California;
Hoopa Tribal Office—Neighborhood Facility Building—Council Chambers; Hwy. 96, Hoopa, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, suite 212), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25638). The principal agenda item will be consideration of the technical review of the Hoopa Valley Tribe's proposal for applying deficit accounting to the management of fall chinook salmon spawning escapement in the Klamath River Basin.

Dated: May 3, 1994.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–11188 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Delta Region Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, June 15, 1994, in the St. Bernard Parish Council Chambers, 8201 West Judge Perez Drive, Chalmette, Louisiana.

The Delta Region Preservation Commission was established pursuant to Section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafittee National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Park Operations Update
—General Management Plan Subcommittee Report
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statement may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, suite 3080, New Orleans, Louisiana 70130, Telephone 504/589–3882.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of

Jean Lafitte National Historical Park and Preserve.

Dated: April 25, 1994.

Mary R. Bradford,

Deputy Regional Director, Southwest Region.

[FR Doc. 94–11246 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–70–M

Upper Delaware Citizens Advisory Council Meeting Schedule

AGENCY: National Park Service, Interior.

ACTION: Notice of change of meeting schedule.

SUMMARY: This notice establishes the revised schedule for calendar year 1994 meetings of the Upper Delaware Citizens Advisory Council, as required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Saturday, May 14, 1994, 9 a.m. until 3:30 p.m., Project Learning Tree.

Address: Camp Koinonia, Route 55, Highland Lake, New York.

Meeting Date and Time: Saturday, June 11, 1994, 9 a.m. until 3:30 p.m., Rural community planning.

Address: Tusten Town Hall, Bridge Street, Narrowsburg, New York.

Meeting Date and Time: Tuesday, June 14, 1994, 7 p.m. until 9 p.m., Business.

Address: National Park Service Headquarters, 2428 River Road, Beach Lake, PA 18405.

Meeting Date and Time: Tuesday, July 12, 1994, 7 p.m. until 9 p.m., Endangered Species.

Address: Tusten Town Hall, Bridge Street, Narrowsburg, New York.

Meeting Date and Time: Tuesday, August 9, 1994, 7 p.m. until 9 p.m., Business Meeting.

Address: National Park Service Headquarters, 2428 River Road, Beach Lake, Pennsylvania.

Meeting Date and Time: Tuesday, September 13, 1994, To be announced.

Address: To be announced.

Meeting Date and Time: Tuesday, October 11, 1994, 7 p.m. until 9 p.m., Business meeting.

Address: National Park Service Headquarters, 2428 River Road, Beach Lake, Pennsylvania.

Meeting Date and Time: Tuesday, November 18, 1994, 7 p.m. until 9 p.m. Rain Date: December 10, 1994, The Lenape: Upper Delaware Native Americans.

Address: Tusten Town Hall, Bridge Street, Narrowsburg, New York.

Press Releases containing specific information regarding the subject of the monthly meeting will be published in the following area newspapers:

The Sullivan County Democrat
The Times Herald Record
The River Reporter
The Tri-State Gazette
The Pike County Dispatch
The Pike County Courier
The Wayne Independent
The Hawley News Eagle
The Weekly Almanac

Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, WVOS and WJFF.

FOR FURTHER INFORMATION CONTACT: Superintendent, Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, New York 12764–0159, 717–729–8251.

Dated: April 19, 1994.

B.J. Griffin,

Regional Director, Mid-Atlantic Region.

[FR Doc. 94–11245 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 30, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 25, 1994.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

FLORIDA

Dade County

MacFarlane Homestead Historic District, Roughly bounded by Jefferson St., Frow Ave., Brooker St. and Grand Ave., Coral Gables, 94000533

Sarasota County

Corrigan House, 463 Sapphire Dr., Sarasota, 94000528

GEORGIA

Grady County

Cairo Commercial Historic District, Roughly bounded by Broad St., Railroad Ave. and Martin Luther King Ave., with adjacent properties on 2nd Ave. and 1st St. Cairo., 94000525

Meriwether County

Bulloch, Benjamin F., House, Spring St., Warm Springs, 94000524

Upson County

Barron, Sydney, House, 505 Stewart Ave., Thomaston, 94000526

NORTH CAROLINA

Brunswick County

T. B. McClintic, Tripp's Marina, Shallotte Point, 94000532

Davie County

Foard—Tatum House, At end of NC 1101, Cooleemee vicinity, 94000530

Duplin County

Herring, Needham Whitfield, House, 201 NC 24–50, Kenansville, 94000529

Lee County

Euphronia Presbyterian Church, (Lee County MPS), 3800 Steel Bridge Rd., Sanford, 94000527

PENNSYLVANIA

Bucks County

Uhlerstown Historic District, Roughly bounded by the Delaware R., Jugtown Hill Rd., and the Delaware Canal, Tinicum Township, Uhlerstown, 94000517

Cambria County

Colver Historic District, (Bituminous Coal and Coke Resources of Pennsylvania MPS), Roughly bounded by Ninth Ave., the Ebensburg Coal Company Power Building and Bakerville, Cambria Township, Colver, 94000521

Fayette County

Shoaf Historic District, (Bituminous Coal and Coke Resources of Pennsylvania MPS), Roughly bounded by Nos. 1–170 First St., Second St., processing buildings and the bank of coke ovens, Georges Township, Shoaf, 94000518

Smock Historic District, (Bituminous Coal and Coke Resources of Pennsylvania MPS), Roughly bounded by Redstone Cemetery, Colonial Mine No. 1, Smock Hill, Colonial Mine No. 2 and Redstone Cr., Smock, 94000520

Huntingdon County

Mount Union Historic District, Roughly bounded by Water and Greene Sts., the I.O.O.F Cemetery, Washington and Lafayette Sts., Shirley Township, Mount Union Borough, 94000516

Philadelphia County

University Avenue Bridge, 1000 block S. University Ave., Philadelphia, 94000515

Somerset County

Boswell Historic District, (Bituminous Coal and Coke Resources of Pennsylvania MPS), Roughly bounded by Hower Ave., Atkinson Way, Quemahoning Creek, Main St. and Juniata St., Boswell, 94000519

Yairnbrook Historic District, (Bituminous Coal and Coke Resources of Pennsylvania MPS), Roughly bounded by the Penn Central RR tracks, McGregor Ave., Windber Ave. and John St., Shade Township, Cairnbrook, 94000523

Westmoreland County

Slickville Historic District, (Bituminous Coal and Coke Resources of Pennsylvania (MPS), Roughly bounded by Greenburg and Second Ave. and Delmont, Court, Cottage and Fred Sts., Salem Township, Slickville, 94000522

UTAH

Summit County

Bardsley, Dr. William, House, (Residences of Mining Boom Era Park City MPS), 517 Park Ave., Park City, 94000531

Utah County

Lehi Roller Mills, 700 E. Main St., Lehi, 94000535

Utah Southern Railroad Depot, Approximately 813 N. 150 East (N of Union Pacific RR tracks), Lehi, 94000536

Wasatch County

Burgener—Boss Farmstead, 102 W. 100 North, Midway, 94000534

WISCONSIN

Dane County

Sure Johnson Mound Group, (Late Woodland Stage in Archeology, Region 8 MPS), 1 mile WSW of jct. Elvehjem Rd. and County Rd. AB, McFarland vicinity, 94000537

[FR Doc. 94–11244 Filed 5–9–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–652 (Final)]

Aramid Fiber Formed of Poly Paraphenylene Terephthalamide ("PPD-T") From the Netherlands; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon the request of the respondents in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for May 5, 1994, *in camera*. See Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: James Lyons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3094. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that unusual circumstances are present in these investigations so as to make it appropriate to hold a portion of the hearing *in camera*. This decision is made in light of the desirability of affording a full discussion at the hearing of business proprietary information (BPI) concerning (1) the condition of the domestic industry or industries; (2) confidential pricing, capacity, and capacity utilization data; and (3) confidential data regarding profitability, cost of goods sold, and sales, general and administrative expenses relating to a small number of domestic producers. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible, its business should be conducted in public.

Authority: The Acting General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR § 201.39) that, in his opinion, a portion of the Commission's hearing in the above-captioned investigation may be closed to the public to prevent the disclosure of business proprietary information.

Issued: May 4, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11169 Filed 5–9–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–647 (Final)]

Certain Steel Wire Rod From Canada

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On April 18, 1994, the Commission received a letter from counsel for petitioner in the subject investigation (Wiley, Rein & Fielding) withdrawing its petition. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping duty investigation concerning certain steel wire rod from Canada (investigation No. 731–TA–647 (Final)) is terminated.

EFFECTIVE DATE: May 3, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

Issued: May 4, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11241 Filed 5–9–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32491]

Grand Trunk Western Railroad Incorporated, Successor to Grand Trunk Western Railroad Company; Trackage Rights Exemption; Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad Company (IHB) and Grand Trunk Western Railroad Incorporated (GTW), successor to Grand Trunk Western Railroad Company, have agreed to amend their existing trackage rights agreement.[1] The agreement granted GTW overhead trackage rights between Riverdale and Franklin Park, IL as follows: (1) Between IHB's connection with the Union Pacific Railroad at Dolton Tower and IHB's connection with the Chicago and Northwestern Transportation Company's (CNW) at Proviso yard, and (2) between IHB's connection with GTW and GTW's tower at Blue Island, IL, and IHB's connection with CNW at Proviso yard. The amended agreement will allow GTW to operate over an additional 2.8 miles between IHB's connection with GTW at Blue-Island, IL and IHB's connection with the Wisconsin Central Railway Ltd. at Norpaul in Franklin Park, IL. The trackage rights became effective on April 26, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Kevin M. Stanko, Attorney, Grand Trunk Western Railroad Incorporated, 1333 Brewery Park Blvd., Detroit, MI 48207–2699, and Joseph A. Markase,

[1] The existing trackage rights were acquired by GTW under a Notice of Exemption in *Grand Trunk Western Railroad Company—Trackage Rights Exemption—Indiana Harbor Belt Railroad Company*, Finance Docket No. 31611 (ICC served Mar. 23, 1990).

Counsel, Indiana Harbor Belt Railroad Company, Office of the General Manager, 2721 161st St., Hammond, IN 47623.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 3, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11207 Filed 5–9–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32146 (Sub-No. 1)]

Minnesota Transportation Museum, Inc.—Renewal of Trackage Rights Exemption—Wisconsin Central, Ltd.

Wisconsin Central, Ltd. (WCL) has agreed to extend for 5 years its grant of trackage rights to Minnesota Transportation Museum, Inc. (MTM), to conduct passenger operations over its line between milepost 23.7 at Withrow, MN, and milepost 63.1 at Amery, WI, a distance of 39.4 miles.[1] The extension of the trackage rights will become effective on or after May 5, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petition to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Byron D. Olsen, 4200 First Bank Place, 601 Second Avenue South, Minneapolis, MN 55402–4302.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 4, 1994.

[1] The existing trackage rights were granted by WCL to MTM under a Notice of Exemption in *Minnesota Transportation Museum, Inc.—Trackage Rights Exemption—Wisconsin Central Ltd.*, Finance Docket No. 32146 (ICC served and published Sept. 11, 1992, 57 FR 41779).

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11211 Filed 5–9–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–290 (Sub-No. 140X)]

Norfolk and Western Railway Company—Abandonment Exemption—in Charles Town, WV

[Docket No. AB–55 (Sub-No. 482X)]

CSX Transportation, Inc.—Abandonment Exemption—in Charles Town, WV

Norfolk and Western Railway Company (NW) and CSX Transportation, Inc. (CSXT) have filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon their jointly-owned 0.99-mile line of railroad between mileposts 0.00 and 0.99 at Charles Town (Ranson), in Jefferson County, WV.[1]

NW and CSXT have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 9, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by May 20, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 31, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representatives: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510; and Charles M. Rosenberger, CSX Transportation, Inc., 500 Water St. J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

NW and CSXT have filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 13, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 29, 1994.

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicants, in their verified notice, indicated a proposed consummation date of June 1, 1994. Because the verified notice was not filed until April 20, 1994, consummation should not have been proposed to take place prior to June 9, 1994. Applicants' representative has confirmed that the correct consummation date is on or after June 9, 1994.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11210 Filed 5–9–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–33 (Sub-No. 84)]

Union Pacific Railroad Company—Abandonment—In Sutter County, CA (Yuba City Branch)

The Commission has found that the public convenience and necessity permit Union Pacific Railroad Company to abandon its 1.91-mile line of railroad from milepost 5.20 at Sutter, CA to the end of the line at milepost 7.11 in Sutter County, CA. The certificate will be issued 30 days after publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to continue; and (2) it is likely that the assistance would fully compensate the railroad.

Requests for public use conditions must be filed with the Commission and the applicant within 10 days after publication.

Any financial assistance offer must be filed with the Commission and applicant no later than 10 days from the publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB–OFA." Any offer previously made must be remade within the 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: April 26, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin. Vice Chairman Phillips approved in part and dissented in part with a separate expression. Commissioner Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11209 Filed 5–9–94; 8:45 am]

BILLING CODE 7035–01–P

Release of Waybill Data

The Commission has received a request from ALK Associates Inc. for permission to use certain data from the Commission's 1992 and 1993 (Aug. 1994) ICC Waybill Samples.

A copy of the request (WB547—3/31/94) may be obtained from the ICC Office of Economics and Environmental Analysis.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economics and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11212 Filed 5–9–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 31960 (Sub-No. 1)]

Wisconsin Central Ltd.; Trackage Rights Exemption; Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad Company (IHB) has agreed to grant overhead trackage rights to Wisconsin Central Ltd. (WCL) over 3.86-miles of rail line between IHB's connection with the Belt Railway Company (BRC) in Bedford Park, IL, to its connection with the Norfolk Southern Railway Company at Chicago Ridge, IL. These trackage rights are in addition to trackage rights previously granted in a 1991 Agreement between the parties,[1] which allowed overhead trackage rights between Norpaul Yard and BRC and Consolidated Rail Corporation at Elsdon, Chicago, IL. The trackage rights granted to WCL by IHB in this and the previous matter total 17.39 miles. The trackage rights were to become effective on April 28, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Janet H. Gilbert, 6250 North River Road, suite 900, Rosemont, IL 60018.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 3, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11208 Filed 5–9–94; 8:45 am]

BILLING CODE 7035–01–P

[1] The existing trackage rights were acquired by WCL under a notice of exemption in *Wisconsin Central Ltd.—Trackage Rights Exemption—Indiana Harbor Belt Railroad Company*, Finance Docket No. 31960 (ICC served Nov. 4, 1991).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is a notice that on January 28, 1994, Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 9, 1994.

Dated: May 3, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–11218 Filed 5–9–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 26, 1994, Organix Inc., 65 Cummings Park, Woburn, Massachusetts 01801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance Tetrahydrocannabinols (7370).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 9, 1994.

Dated: May 3, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–11217 Filed 5–9–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on April 7, 1994, Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Branchburg, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Methadone (9250)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 9, 1994.

Dated: May 3, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–11216 Filed 5–9–94; 8:45 am]

BILLING CODE 4410–09–M

NUCLEAR REGULATORY COMMISSION

Revisions to the Standard Review Plan for the Review of License Application for a Low-Level Radioactive Waste Disposal Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of Final Revision 3 to the SRP.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of Final Revision 3 to the Standard Review Plan for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility (SRP). The availability of Proposed Draft Revision 3 to the SRP (NUREG–1200) was noticed for public comment in the **Federal Register** on July 12, 1993. In this final revision, NRC made changes to the proposed SRP draft sections in response to comments from the Advisory Committee on Nuclear Waste, State regulators, and the general public. In addition, three administrative changes to the SRP have also been completed during finalization of this revision. The additional changes were not contained in draft version of the SRP noticed for comment because they are considered administrative and not technical changes. The three administrative modifications are: (1) Providing each SRP reference with a designation of essential or helpful; (2) providing each SRP section a designation which indicates the technical, disciplines sufficient to assure a meaningful review of a license application which contains the information requested in NUREG–1199, "Standard Format and Content of a License Application for a Radioactive Low-Level Waste Disposal Facility" (SF&C) and; (3) replacing references to the old Part 20 with new sections appropriate for the new Part 20 issued on May 20, 1991. These administrative changes have required revisions to each section of the SRP and this entire final version has thus been issued as Revision 3 dated March 1994.

Comments and suggestion for improvements in regulatory guidance documents such as Standard Review Plans are encouraged at any time. Regulatory guidance documents will be revised periodically, to accommodate appropriate comments and reflect new information or experience.

DATES: The document is effective as of March 1994.

ADDRESSES: Copies of Final Revision 3 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5283 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) staff has developed guidance for regulators to review an application for a low-level radioactive waste disposal facility license (NUREG–1200). This guidance has been revised in the light of developing technology and as a result of continual internal review and interaction with the State regulatory agencies. The Low-Level Radioactive Waste Policy Amendments Act of 1985 required that NRC "establish procedures and develop the technical capability" to process such license applications (PL 99–240; Sec 9(1)). As a result NRC staff developed both a Standard Format and Content Guide (SF&CG) and a Standard Review Plan (SRP), NUREG–1199 and NUREG 1200 respectively, to facilitate the licensing process. These documents, which sufficient to prepare and review an application, have undergone additional review by the NRC staff and the States and the Advisory Committee on Nuclear Waste.

The NRC staff has formalized the revisions suggested by this review process in the form of Revision 3 to the SRP. This final revision is based upon experience gained in using the SRP for reviews and recognition that guidance on special issues would be helpful to the States. NRC anticipates periodic review and revision of the SRP as practical experience with its use continues and as technological changes

occur which indicate a need to revise the SRP.

Some administrative aspects of Revision 3 affect the entire document. However, SRP chapters with technical changes in revision 3 are as follows:

1 Licensing Process (A New SRP Chapter)
3.2 Design Considerations
3.2 A Guidance on Soil Cover Systems Placed Over Low-Level Radioactive Waste
4.1 Receipt and Inspection of Waste
4.2 Waste Handling and Interim Storage
4.3 Waste Disposal Operations
6.1 Release of Radioactivity-Introduction
7.1 Occupation Radiation Exposures
7.2 Radionuclide Inventories
7.3 Radiation Protection Design Features and Operating Procedures
7.4 Radiation Protection Program

Copies of the final revisions (Revision 3) may be obtained from the NRC Public Document Room at the address listed under the **SUMMARY** section of this notice.

FOR FURTHER INFORMATION CONTACT: LeRoy S. Person, Office of Nuclear Materials Safety and Safeguards, US Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 504–2575.

Dated at Rockville, Maryland, this 8th day of April 1994.

For the Nuclear Regulatory Commission.

John J. Surmeier,

Acting Chief, Low-Level Waste Management Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–11230 Filed 5–9–94; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–5004 (which should be mentioned in all correspondence concerning this draft guide), is the proposed Revision 3 to Regulatory Guide 5.52, "Standard Format and Content of a Licensee Physical Protection Plan for Strategic Special Nuclear Material at Fixed Sites (Other than Nuclear Power Plants)." DG–5004 is being revised and developed to describe the standard format recommended by the NRC staff for preparing physical protection plans for strategic special nuclear material at fixed sites other than nuclear power plants, as well as guidance on the content of the physical protection plans.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data or a rationale. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by July 15, 1994.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 15th day of April 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94–11228 Filed 5–9–94; 8:45 am]

BILLING CODE 7590–01–M

Entergy Operations, Inc.; Correction to Partial Denial of Amendment to Facility Operating License and Opportunity for a Hearing

[Docket No. 50–368]

In notice document 94–10122 beginning on page 22028, in the issue dated Thursday, April 28, 1994, make the following correction:

In the second column, the second paragraph, the last line reading "proposed change by a letter dated * * *" correct to read "proposed change by a letter dated April 20, 1994." Also, in the sixth paragraph, the last line reading "letter to the licensee dated * * *" correct to read "letter to the licensee dated April 20, 1994."

Dated at Rockville, Maryland this 2nd day of May 1994.

For the Nuclear Regulatory Commission.

William D. Beckner,

Project Director, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–11229 Filed 5–9–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Company (San Onofre Nuclear Generating Station, Unit 1); Exemption

I

Southern California Edison Company (SCE or the licensee) is the holder of Facility Operating License No. DPR–13, which authorizes possession and maintenance of the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The facility consists of a permanently shutdown pressurized water reactor at the SCE site located in San Diego County, California. SONGS 1 is co-located with San Onofre Nuclear Generating Station, Units 2 and 3, which remain operational.

II

SONGS 1 was permanently shut down in November 1992, and defueling of the reactor completed in March 1993. Upon licensee certification of the defueling on March 9, 1993, Amendment No. 150 to Facility Operating License No. DPR–13, modifying the license to preclude reactor operation, became effective.

Title 10 of the Code of Federal Regulations, § 140.11(a)(4) (10 CFR 140.11(a)(4)), requires each licensee to have and maintain primary nuclear liability insurance in an amount equal

to $200 million. In addition, each licensee is required to maintain secondary financial protection in the form of private liability insurance under an industry retrospective plan. However, 10 CFR 140.8 allows that the Commission may, upon application of any interested period or upon its own initiative, grant such exemptions from the requirements of part 140 as it determines are authorized by law and are otherwise in the public interest.

By letter dated February 2, 1993, the licensee requested the elimination of the current requirement for SONGS 1 to participate in the industry retrospective rating plan for secondary level coverage as required in 10 CFR 140.11(a)(4).

III

The Justification presented by the licensee for the request is that the secondary financial protection requirements imposed by 10 CFR 140.11(a)(4) are applicable only to a reactor that is licensed to operate and that is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more. The licensee contends that the provisions of 10 CFR 140.11(a)(4) are no longer applicable to SONGS 1, and there is no credible risk of an accident at SONGS 1 with damages exceeding the $200 million primary coverage which will remain in effect at the SCE site. SCE asserts that because SONGS 1 will not benefit from secondary coverage it should not be obligated to extend such coverage. Additionally, exclusion of SONGS 1 from the secondary financial program will remove the potential liability (up to $75.5 million per event, but not more than $10 million per year per event) that must be reported on SCE financial statements.

The NRC staff independently evaluated the legal and technical issues associated with the application of the Price-Anderson Act to permanently shut down reactors in SECY-93-127, "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," May 10, 1993. In this evaluation, the staff concluded that the Commission has discretionary authority to respond to licensee requests for reduction in the level of primary financial protection and withdrawal from participation in the industry retrospective rating plan. Depending on the plant-specific configuration and the time since permanent shutdown, the staff also concluded that potential hazards may exist at permanently shut down reactors for which financial protection is warranted. The staff also concluded that accidents and hazards ensured against under Price-Anderson go beyond design basis accidents and beyond those considered "credible" as that term is used in 10 CFR Part 100 and cases interpreting the application of that regulation. The Commission issued a staff requirements memorandum (SRM) addressing SECY-93-127 on July 13, 1993.

In the exercise of its discretionary authority, the Commission may, as long as a potential hazard exists at a permanently shutdown reactor, require the full amount of primary financial protection and full participation in the industry retrospective rating plan. At such time as the hazard is determined to no longer exist, the Commission may reduce the amount of primary financial protection and permit the licensee to withdraw from participation in the industry retrospective rating plan.

Since the legislative history does not explicitly consider the potential hazards that might exist after termination of operation, the staff generically evaluated the offsite consequences associated with normal and abnormal operations, design basis accidents, and beyond design basis accidents for reactors that have been permanently defueled and shut down. With regard to SONGS 1, the staff concluded that in view of the time that has elapsed since plant shutdown, aside from the handling, storage, and transportation of spent fuel and radioactive materials, no reasonably conceivable potential accident exists that could cause significant offsite damage.

A severe transportation accident could potentially result in local contamination requiring cleanup and offsite liabilities resulting from traffic disruption and loss of use. This type of accident would warrant maintaining some level of liability insurance. The liabilities and indemnification requirements associated with the transfer of spent fuel from the licensee to the Department of Energy will be evaluated on a case-by-case basis at a future time when spent fuel is shipped to a repository.

Typically, the most significant accident sequence for a permanently defueled and shutdown reactor involves the complete loss of water from a light water reactor spent fuel pool. For a spent fuel pool that contains fuel clad with Zircaloy, this beyond-design-basis accident sequence could result in a Zircaloy fuel cladding fire that could propagate through the spent fuel storage pool and result in significant offsite consequences. Although such an accident is beyond the design bases, it may be considered "reasonably conceivable" and could warrant financial protection. Such an accident is possible during the first year after reactor shutdown for a low density spent fuel storage configuration and during the first two to three years after shutdown for spent fuel stored in certain high density configurations. However, the likelihood of occurrence of a fuel cladding fire at SONGS 1 is negated because stainless steel, rather than Zircaloy, cladding is used at SONGS 1. Zircaloy is a pyrophoric material which can undergo spontaneous oxidation before it reaches its melting point. Zircaloy fuel cladding can therefore oxidize by a self-sustaining reaction (at a temperature of approximately 1650°). Stainless steel, however, cannot attain self-sustaining oxidation before it reaches its melting point. This is due to the presence of chromium which forms an impervious oxide film which prevents oxygen from reaching the metal surface. Consequently, there is no temperature at which stainless steel fuel cladding can support a self-sustaining oxidation reaction. Therefore, the postulated cladding fire accident scenario is not possible at SONGS 1. However, using the Zircaloy fuel cladding analysis conservatively bounds the time at which fuel clad melting and fission product release could occur at SONGS 1.

Once the requisite cooling period after reactor shutdown has elapsed, fuel clad melting after a postulated loss of water is no longer a concern since the fuel would air cool sufficiently. Possible accident scenarios, after these cooling periods have elapsed, have greatly reduced consequences, but could result in small releases or precautionary evacuations which could result in offsite liability.

The staff considered liability coverage needs associated with decommissioning activities and transportation of radioactive materials. The staff recognizes that the potential hazards and consequences associated with a reactor which has been permanently shut down with no spent fuel are greatly reduced, that such a reactor does not contribute a level of risk to the participants in the secondary pool proportionate to that of an operating reactor and that relief from financial protection requirements would then be warranted. The results of our evaluation, as embodied in the July 13, 1993, SRM on SECY-93-127, allow a reduction in the amount of financial protection required of licensees of large nuclear plants that have been prematurely shut down. Although the licensee presented an opinion regarding the application of the Price-Anderson Act and 10 CFR Part 140 to permanently

shut down reactors, the staff did not concur with this licensee opinion. Nonetheless, SCE meets the criterion established in SECY–93–127 for relief from secondary financial protection requirements for low density spent fuel storage. Specifically, more than 16 months have elapsed since SONGS 1 was permanently shut down. This time period is conservative for SONGS 1. The one-year cooling period prescribed in SECY–93–127 was based on fuel with Zircaloy cladding; SONGS 1 fuel is fabricated with stainless steel cladding which negates the likelihood and consequences of the cladding fire sequence and shortens the time after shutdown when fuel clad melting could occur upon loss of pool water, as discussed above.

IV

The staff, based on its independent evaluation as embodied in the July 13, 1993, SRM on SECY–93–127 "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," has concluded that sufficient bases exist for our approval of relief from the financial protection requirements for the San Onofre Nuclear Generating Station, Unit 1. The staff has also concluded that granting the proposed exemption does not increase the probability or consequences of any accidents or reduce the margin of safety at this facility.

V

Based on Sections III and IV above, the Commission has determined that, pursuant to 10 CFR 140.8, this exemption is authorized by law and is otherwise in the public interest. Therefore, the Commission grants an exemption from the requirements of 10 CFR 140.11(a)(4) to the extent that exemption from participation in the industry retrospective rating plan (secondary level financial protection) is granted for the San Onofre Nuclear Generating Station, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (59 FR 22872, dated May 3, 1994).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 4th day of May 1994.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–11227 Filed 5–9–94; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel on the Engineered Barrier System: Impact of High-Level Defense Wastes on DOE Waste Management System

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on the Engineered Barrier System will hold a meeting on Wednesday, June 15, 1994, in Richland, Washington, and a tour of the Hanford facility on Thursday, June 16, 1994. The meeting will be held at the Tower Inn and Conference Center, 1515 George Washington Way, Richland, Washington 99352; tel (509) 946–4121, fax (509) 946–2222. The meeting is open to the public and will begin at 8:30 a.m.

The panel meeting will focus on three areas of interest to the Board. First, panel members will hear about the Department of Energy's (DOE) current plans for processing and packaging high-level tank waste (defense reprocessing waste) at Hanford into forms suitable for transportation and disposal. Second, presentations will be heard on the quantities and characteristics of irradiated materials at Hanford that have not been reprocessed, as well as any plans for their processing and/or packaging into forms suitable for transportation and disposal. Third, panel members have invited appropriate DOE headquarters personnel to talk about activities and plans for the ultimate disposal of surplus weapons plutonium and the affect of this material on the planned high-level waste repository. A site at Yucca Mountain, Nevada, currently is being characterized by the DOE for its suitability as the possible location of a permanent repository for civilian spent fuel and defense high-level waste.

On Thursday, June 16, the panel will participate in a tour of the Hanford facilities discussed in the previous day's meeting. While the Board normally makes every effort to ensure that the general public has access to all of its activities, we have been asked to limit the number of people attending this tour due to space limitations and safety and security requirements at the Hanford facility. Consequently, invitations have been extended to a limited number of representatives from the state of Nevada, Nevada affected units of local government, the Nevada state legislature, the Nuclear Regulatory Commission, and the Department of Energy to attend the tour with the Board.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning July 28, 1994. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: May 4, 1994.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 94–11170 Filed 5–9–94; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

May 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities

Morgan Stanley Africa Investment Fund
Common Stock, $.01 Par Value (File No. 7–12338)
Camden Property Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12339)
Equitable of Iowa Co.'s, Inc.
Common Stock, No Par Value (File No. 7–12340)
Enersis S.A.
American Depositary Shares, No Par Value (File No. 7–12341)
Equity Residential Property Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12342)
Health Management Associates, Inc.
Class A Common Stock, No Par Value (File No. 7–12343)
Liberty Corp.
Common Stock, $.01 Par Value (File No. 7–12344)
Northern Border Partners LP
Units of Ltd. Partnership (File No. 7–12345)
CoastCast Corp.

Common Stock, No Par Value (File No. 7–12346)
Sturm Ruger & Co., Inc.
Common Stock, $.01 Par Value (File No. 7–12347)
Morrison Restaurants, Inc.
Common Stock, $3.33½ Par Value (File No. 7–12348)
Statesman Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12349)
Sofamor/Danek Group, Inc.
Common Stock, No Par Value (File No. 7–12350)
Western National Corp.
Common Stock, $.001 Par Value (File No. 7–12351)
Centex Construction Products, Inc.
Common Stock, $.01 Par Value (File No. 7–12352)
Debartolo Realty Corp. S.A.
Common Stock, No Par Value (File No. 7–12353)
Grand Casino's Inc
Common Stock, $.01 Par Value (File No. 7–12354)
Glimcher Realty Trust
Shares of Beneficial Trust, $.01 Par Value (File No. 7–12355)
Lear Seating Corp.
Common Stock, $.01 Par Value (File No. 7–12356)
Mills Corporation
Common Stock, $.01 Par Value (File No. 7–12357)
Rayonier, Inc.
Common Stock, $.01 Par Value (File No. 7–12358)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11253 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

May 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Agree Realty Corporation
Common Stock, $.0001 Par Value (File No. 7–12359)
Carl Karcher Enterprises, Inc.
Common Stock, $.01 Par Value (File No. 7–12360)
Debartolo Realty Corporation
Common Stock, No Par Value (File No. 7–12361)
Grand Casinos, Inc.
Common Stock, $.01 Par Value (File No. 7–12362)
Mills Corporation
Common Stock, $.01 Par Value (File No. 7–12363)
Senior Strategic Income Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–12364)
Rayonier, Inc.
Common Stock, $1.00 Par Value (File No. 7–12365)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11250 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

May 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Bankers Trust New York Corp.
Depositary Shares (rep. 1/100 sh. Adj. Rte. Cm. Pfd. Ser. Q) (Filed No. 7–12366)
Cold Metal Products, Inc.
Common Stock $.01 Par Value (File No. 7–12367)
Digital Equipment Corp.
Depositary Shares (rep. ¼ sh. Ser. A Cm. Pfd. Stock, $1.00 Par Value (File No. 7–12368)
Emerging Markets Floating Rate Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12369)
Emphesys Financial Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12370)
EOTT Energy Partners, L.P.
Common Units rep. L.P. Interests (File No. 7–12371)
Executive Risk, Inc.
Common Stock, $.01 Par Value (File No. 7–12372)
Fidelity Advisory Emerging Asia Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12373)
First USA, Inc.
6¼ PRIDES Cv. Pfd., $.01 Par Value (File No. 7–12374)
Grupo Embotellador de Mexico, S.A. de C.V.
Global Depositary Shares (rep. 2 Ord. Partic. Ctfs.) (File No. 7–12375)
International Colin Energy Corp.
Common Stock, No Par Value (File No. 7–12376)
JDN Realty Corp.
Common Stock, $.01 Par Value (File No. 7–12377)
Macerich Co.
Common Stock, $.01 Par Value (File No. 7–12378)
Morgan Stanley European Emerging Markets Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12379)
Puget Sound Power & Light Co.
Adj. Rte., Cm. Pfd. Ser. B, $25.00 Par Value (File No. 7–12380)
RCM Strategic Global Government Fund, Inc.
Common Stock, $.00001 Par Value (File No. 7–12381)
Regency Health Services, Inc.
Common Stock, $.01 Par Value (File No. 7–12382)
Rhodes, Inc.
Common Stock, No Par Value (File No. 7–12383)
Rouge Steel Co.
Class A Common Stock, $.01 Par Value (File No. 7–12384)
Santander Finance Ltd.

Non-Cm. Gtd. Pref. Sh. Ser. B, $25.00 Par Value (File No. 7–12385)
Scudder World Income Opportunities Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12386)
Security Capital Industrial Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12387)
Storage USA, Inc.
Common Stock, $.01 Par Value (File No. 7–12388)
Titan Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7–12389)
Titan Wheel International, Inc.
Common Stock, No Par Value (File No. 7–12390)
Valero Energy Corp.
$3.125 Cv. Pfd. Stock (File No. 7–12391)
Turner Broadcasting
Class A Stock, $.0625 Par Value (File No. 7–12392)
Turner Broadcasting
Class B Stock, $.0625 Par Value (File No. 7–12393)
Rayonier, Inc.
Common Stock, No Par Value (File No. 7–12394)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11252 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Inc.

May 25, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Rayonier, Inc.
Common Stock, No Par Value (File No. 7–12396)

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11254 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Rayonier, Inc.
Common Stock, $.01 Par Value (File No. 7–12395)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11251 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Three-Five Systems, Inc.
Common Stock, $0.01 Par Value (File No. 7–12319)
Fortune Petroleum Corporation
Common Stock, $0.01 Par Value (File No. 7–12320)
Lone Star Industries
Warrants, Expiring December 31, 2000 (File No. 7–12321)
Debartolo Realty Corporation
Common Stock, $.01 Par Value (File No. 7–12322)
InterlCom Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12323)
Citizens, Inc.
Class A Common Stock, No Par Value (File No. 7–12324)
AZCO Mining, Inc.
Common Stock, $.002 Par Value (File No. 7–12325)
Mills Corporation
Common Stock, $.01 Par Value (File No. 7–12326)
Agree Realty Corporation
Common Stock, $.0001 Par Value (File No. 7–12327)
Lehman Brothers Holdings, Inc.
Japanese Yen Warrants Expiring March 5, 1996 (File No. 7–12328)
Morgan Stanley Group, Inc.
Japanese Yen Warrants Expiring September 9, 1995 (File No. 7–12329)
PaineWebber Group, Inc.

US Dollar Japanese Yen Warrants Expiring March 6, 1996 (File No. 7–12330)
Grand Casinos, Inc.
Common Stock, $.01 Par Value (File No. 7–12331)
Carl Karcher Enterprises, Inc.
Common Stock, $.01 Par Value (File No. 7–12332)
Conagra, Inc
9 PC Series A Cum. Pfd. Securities (File No. 7–12333)
TII Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–12334)
East Group Properties
Shares of Beneficial Interest, Common Stock, $.01 Par Value (File No. 7–12335)
RJR Nabisco Holding Corporation
Series C Depositary Shares (File No. 7–12336)
Kemper Strategic Income Fund
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12337)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 25, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–11255 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20277; 811–5106]

Bull & Bear Financial News Composite Fund, Inc.; Notice of Application

May 4, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Bull & Bear Financial News Composite Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 22, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 31, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 11 Hanover Square, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified, open-end management investment company organized as a Maryland corporation. On April 10, 1987, applicant filed a notification of registration on Form N–8A and a registration statement on Form N–2. The registration statement became effective on or about September 18, 1987, and applicant commenced its initial public offering immediately thereafter. In connection with applicant's conversion to an open-end management investment company, applicant filed a registration statement on Form N–1A on April 28, 1989, which became effective on or about September 19, 1989.

2. On November 3, 1993, applicant's board of directors adopted an agreement and plan of reorganization and liquidation (the "Plan"). The Plan provided that applicant would transfer all of its assets and liabilities to Bull & Bear Quality Growth Fund (the "Acquiring Fund"), a portfolio of Bull & Bear Funds I, Inc., in exchange for shares of the Acquiring Fund. In approving the Plan, applicant's directors determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.

3. On November 8, 1993, applicant filed an application for an order of the SEC pursuant to sections 17(b) and 17(d) of the Act and rule 17d–1 thereunder to permit the proposed reorganization. An order of the SEC was granted on January 4, 1994.[1]

4. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC and mailed to applicant's shareholders on or about December 16, 1993. Applicant's shareholders approved the Plan at a meeting held on January 21, 1994.

5. On January 21, 1994, the reorganization was consummated. Applicant transferred all of its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund. The exchanges were made at net asset value determined as of the close of business on January 21, 1994. The shares received in exchange for applicant's assets were distributed to applicant's shareholders *pro rata* in accordance with their respective interests in applicant.

6. All expenses incurred in connection with applicant's liquidation and reorganization were borne by Bull & Bear Advisers, Inc., applicant's investment adviser. Such expenses, totalling $40,361, included legal expenses, expenses of printing and mailing communications to shareholders, registration fees, and miscellaneous accounting and administrative expenses.

7. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11249 Filed 5–9–94; 8:45 am]

BILLING CODE 8010–01–M

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[1] Bull and Bear Financial News Composite Fund, Inc., Investment Company Act Release Nos. 19927 (Dec. 7, 1993) (notice) and 19997 (Jan. 4, 1994) (order).

[Investment Company Act Release No. 20275; 811-7114]

Nuveen Select Tax-Free Income Portfolio 5; Notice of Application

May 4, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Select Tax-Free Income Portfolio 5.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on April 8, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 31, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 333 West Wacker Drive, Chicago, Illinois 60606-1286.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or Barry D. Miller, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as a closed-end, diversified management company under the Act and organized as a business trust under the laws of the Commonwealth of Massachusetts. On August 21, 1992, Applicant filed a registration statement on Form N-1A under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement was not declared effective. Applicant has never made a public offering of its shares.

2. As of the date of this application, Applicant has no securityholders; no assets, debts and liabilities; and is not a party to any litigation or administrative proceeding.

3. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-11248 Filed 5-9-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20274; File No. 812-8782]

The Travelers Insurance Company, et al.

May 3, 1994.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Travelers Insurance Company ("The Travelers") and The Travelers Fund BD for Variable Annuities ("Fund BD").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of Fund BD of a mortality and expense risk charge imposed under certain individual flexible premium variable annuity contracts ("Contracts").

FILING DATE: The application was filed on January 21, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applications with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on May 31, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers interest, the reason for request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Julie E. Rockmore, Counsel, The Travelers Insurance Company, One Tower Square, Hartford, Connecticut 06183-1051.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Wendell M. Faria, Acting Assistant Director, on (202) 942-0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The 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. The Travelers, an indirect wholly-owned subsidiary of The Travelers Inc., is a stock life insurance company organized under the laws of the State of Connecticut in 1864.

2. Fund BD was established by The Travelers on October 22, 1993 as a separate account under Connecticut law to fund individual and group flexible premium deferred variable annuity contracts issued by The Travelers. Fund BD is subdivided into subaccounts, each of which will invest its assets exclusively in the shares of one of the portfolios of the SBA Variable Products Series Fund, an open-end series-type management investment company.

3. The Contract is an individual flexible premium variable annuity contract which can be purchased on a qualified or nonqualified basis. Purchase payments under the Contract may be allocated to the subaccounts of Fund BD and/or a fixed account. Upon retirement, annuity payments will be made on a fixed or variable basis.

4. If either the annuitant or the Contract owner dies before the maturity date of the Contract, The Travelers will pay a death benefit. Under the standard death benefit, The Travelers will pay the greatest of (a) the Contract value; (b) the total purchase payments under the Contract; or (c) the Contract value on the fifth Contract year anniversary immediately preceding the receipt by The Travelers of proof of death, less applicable premium tax or surrenders no previously deducted. If the death occurs after age 75 but before age 85, the standard benefit will be the greatest of (a) or (b) above or the Contract value on the latest fifth Contract year on or before the deceased's 75th birthday, less applicable premium tax or surrenders not previously deducted. After age 85,

the benefit will be the Contract value. Under the enhanced death benefit, The Travelers will pay the greater of the Contract value or a guaranteed death benefit equal to purchase payments (minus surrenders and applicable premium taxes) increased by 5% on every Contract date anniversary up to the anniversary following the deceased's 75th birthday, with a maximum benefit of 200% of purchase payments minus surrenders and minus applicable premium taxes. After age 75 but before age 85, the enhanced benefit will be the greater of the guaranteed death benefit as of the deceased's 75th birthday, plus additional purchase payments, minus surrenders and applicable premium taxes or the Contract value less premium taxes. After age 85, The Travelers will pay the Contract value, less applicable premium taxes.

5. The Travelers will assess an annual Contract administrative charge of $30 under the Contracts. This charge will not be assessed after an annuity payout has begun, at the death of the annuitant or the Contract owner, or if the Contract owner has a Contract value greater than $40,000 on the assessment date. The Travelers also will assess the sub-accounts of Fund BD a daily asset charge at an effective rate of 0.15% per annum for administrative expenses. Applicants represent that these charges cannot be increased during the life of the Contracts and that they represent reimbursement for only the actual administrative costs expected to be incurred over the life of the Contracts.

6. To compensate The Travelers for assuming mortality and expense risks, The Travelers will deduct from the subaccounts of Fund BD an amount equal on an annual basis to a maximum of 1.02% of the net asset value of the subaccounts in connection with Contracts providing the standard death benefit, and a maximum of 1.30% of the net asset value of the subaccounts in connection with Contracts providing the enhanced death benefit. The Travelers estimates that in connection with the 1.02% fee approximately 75% of the fee is for assumption of the mortality risk and 25% of the fee is for assumption of the expense risk, and in connection with the 1.30% fee approximately 80% of the fee is for assumption of the mortality risk and 20% of the fee is for assumption of the expense risk.

7. The Travelers assumes certain mortality risks by its contractual obligation to continue to make annuity payments for the life of the annuitant under annuity options which involve life contingencies. This assures that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the annuity payments received under a Contract. The Travelers assumes additional mortality and expense risks by its contractual obligation to pay either the standard or the enhanced death benefit if either the annuitant or the Contract owner dies prior to the maturity date. Because the enhanced death benefit provides a potentially higher level of benefits than the standard death benefit, the mortality risks for the enhanced death benefit exceed those for the standard death benefit. Therefore, Contracts with an enhanced death benefit are assessed a higher mortality and expense risk charge. The Travelers assumes an expense risk because the administrative charge may be insufficient to cover actual expense.

8. Applicants state that if the administrative charges and the mortality and expense risk charge are insufficient to cover the expenses and costs assumed, the loss will be borne by The Travelers. Conversely, if the amount deducted proves more than sufficient, the excess will represent a profit to The Travelers. The Travelers does not expect to profit from the administrative charges, however, it does expect to profit from the mortality and expense risk charge. Any profit would be available to The Travelers for any proper corporate purpose, including payment of distribution expenses.

9. No sales charge is collected or deducted at the time purchase payments are applied under the Contracts. A contingent deferred sales charge ("surrender charge") will be assessed upon certain full or partial surrenders. A surrender charge applies if all or part of the Contract value is surrendered during the first six years following a purchase payment. The surrender charge starts at 6% of a purchase payment in the first, second and third years following the payment, and reduces to 3% in the fourth year, 2% in the fifth year and 1% in the sixth year following the payment. There is no charge after the sixth year following a purchase payment. After the first Contract year, Contract owners may surrender 15% of their Contract value (as of the beginning of the Contract year) without incurring a surrender charge (the "free withdrawal amount"). The free withdrawal allowance applies to partial surrenders of any amount and to full surrenders except full surrenders where the Contract value is directly transferred to annuity contracts issued by other financial institutions. In addition, there is no charge on Contract earnings, which equal: (1) The Contract value; minus (2) the sum of all purchase payments received that have not been previously surrendered; minus (3) the 15% free withdrawal amount. Surrenders will be deemed to have been taken first from any applicable 15% free withdrawal amount; next from purchase payments (on a first-in, first-out basis); and finally from Contract earnings (in excess of any 15% free withdrawal amount). The Travelers does not expect that the surrender charge will cover sales and distribution expense incurred in connection with the Contracts.

Applicants' Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act require that all payments received under a periodic payment plan certificate be held by a qualified trustee or a custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

2. Applicants represent that the 1.02% mortality and expense risk charge for Contracts providing the standard death benefit is reasonable in relation to the risks assumed by The Travelers under the Contracts and is within the range of industry practice for comparable annuity contracts. The Travelers states that it has reviewed publicly available information regarding products of other companies taking into consideration such factors as guaranteed minimum death benefits, minimum initial and subsequent purchase payments, other contract charges, the manner in which charges are imposed, market sector, investment options and the availability of a product for use in qualified and non-qualified plans. Based on this review, The Travelers has concluded that the mortality and expense risk charge for Contracts providing the standard death benefit is within the range of charges determined by industry practice. The Travelers represents that it will maintain at its principal office, and make available upon request of the Commission or its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology used in, and the results of, the comparative review.

3. Applicants represent that the mortality and expense risk charge of 1.30% for the enhanced death benefit Contracts is reasonable in relation to the risks assumed by The Travelers under the Contracts. In arriving at this determination, The Travelers ran a large number of computer generated trials at various issue ages to determine the

expected cost of the enhanced death benefit. First, hypothetical asset returns were projected using generally accepted actuarial simulation methods. For each asset return pattern thus generated, hypothetical accumulated values were calculated by applying the projected asset returns to the initial value in a hypothetical account. Each accumulated value so calculated was then compared to the amount of enhanced death benefit payable in the event of the hypothetical annuitant's or Contract owner's death during the year in question. By analyzing the results of several thousand such simulations, The Travelers was able to determine actuarially the level cost of providing the enhanced death benefit. Based on this analysis, The Travelers determined that an additional mortality risk charge of 0.28% was a reasonable charge for the enhanced death benefit as compared to the charge for the standard death benefit. The Travelers undertakes to maintain at its home office a memorandum, available to the Commission or its staff upon request, setting forth in detail the methodology used in determining that the additional risk charge of 0.28% for the enhanced death benefit is reasonable in relation to the risks assumed by The Travelers under the Contracts.

4. Applicants acknowledge that the surrender charge may be insufficient to cover all distribution costs and that, if a profit is realized from the mortality and expense risk charge, all or a portion of that profit may be offset by distribution expenses not reimbursed by the surrender charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the cost relating to distribution of the Contracts. Notwithstanding this, The Travelers has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Fund BD and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by The Travelers at its principal office and will be available to the Commission or its staff upon request.

5. The Travelers also represents that Fund BD will invest only in underlying mutual funds which have undertaken to have a board of directors or board of trustees, as applicable, a majority of whom are not "interested persons" under the Act, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Conclusion

Applicants submit for all of the reasons stated herein, that their request for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the Act meets the standards set out in Section 6(c) of the Act and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11155 Filed 5–9–94; 8:45 am]

BILLIND CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before June 9, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3d Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: SBIR Mailing Lists and Confirmation Requests.

Form No.: SBA 1386, 1906.

Frequency: On Occasion.

Description of Respondents: Small businesses interested in participating in the SBIR/STTR solicitation process.

Annual Responses: 60,000.

Annual Burden: 500.

Dated: May 3, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–11190 Filed 5–9–94; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Minority and Women Owned Banks/Thrifts Customer Satisfaction Survey.

Form No.: N/A.

Frequency: On Occasion.

Description of Respondents: Minority/Women Small Business Companies.

Annual Responses: 146.

Annual Burden: 2.482.

Dated: May 3, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–11289 Filed 5–9–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended April 29, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49525
Date filed: April 25, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 25, 1994
Description: Application of Federal Express Corporation pursuant to Section 401(d)(1) of the Act and sbpart Q of the Regulations, requests renewal of its existing fixed-term certificate authority to provide scheduled foreign air transportation of property and mail between Harlingen, Texas, on the one hand, and Mexico City, Guadalajara and Monterrey, Mexico, on the other hand, as contained in Segments 1, 2 and 3 of Federal Express' certificate of public convenience and necessity for Route 568.

Docket Number: 49526
Date filed: April 26, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 1994
Description: Application of American Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for renewal of Segment 1 of its certificate for Route 470, issued by Order 89–9–45, authorizing scheduled foreign air transportation of persons, property, and mail between the coterminal points Houston and Dallas/Ft. Worth, Texas, the intermediate points Calgary and Edmonton, Alberta, Canada, and the coterminal points Anchorage and Fairbanks, Alaska.

Docket Number: 49527
Date filed: April 26, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 1994
Description: Application of American Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to provide foreign air transportation of persons, property, and mail between Chicago, Dallas/Ft. Worth, Los Angeles, and New York, on the one hand, and Osaka, Japan, on the other, and beyond to Hong Kong, Seoul, Singapore, and Taipei.

Docket Number: 49529
Date filed: April 26, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 1994
Description: Application of USA Jet Airlines, Inc., pursuant to Section 401(d)(1) of the Act, applies for a certificate of public convenience and necessity authorizing USA Jet to provide worldwide foreign charter air transportation of property and mail. Initially, USA Jet plans to operate charters to points in Canada and Mexico from various points in the United States.

Docket Number: 49530
Date filed: April 26, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 24, 1994
Description: Application of USA Jet Airlines, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing USA Jet to provide interstate and overseas charter air transportation of property and mail.

Docket Number: 49533
Date filed: April 29, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 27, 1994
Description: Application of United Parcel Service Co., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests renewal of its existing certificate authority to provide scheduled foreign air transportation of property and mail between Houston, Texas, on the one hand, and Mexico City, Guadalajara and Monterrey, Mexico, on the other hand, as contained in Segments 1, 2 and 3 of UPS's certificate of public convenience and necessity for Route 569. UPS requests that the foregoing authority be renewed for an additional five-year terms, through October 27, 1999, or for five years after the effective date of the DOT's final order granting this Application, whichever is later.

Docket Number: 45959
Date filed: April 28, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 26, 1994
Description: Application of Amerijet International, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests renewal of a certificate of public convenience and necessity issued by Order 89–9–36 authorizing Amerijet to provide scheduled all-cargo air transportation between Miami, Florida, on the one hand, and Mexico City, and Merida, Mexico, on the other.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 94–11151 Filed 5–9–94; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION (DOT)

Office of the Secretary

Regional Liaison Outreach and Services Program (L.O.S.P.); Announcement of Request for Proposals

AGENCY: Office of Small and Disadvantaged Business Utilization (O.S.D.B.U.), Department of Transportation.

ACTION: Notice of request for proposals.

SUMMARY: The Department of Transportation's Office of Small and Disadvantaged Business Utilization (O.S.D.B.U.) is responsible for the Department's implementation and execution of the functions and duties under sections eight (8) and fifteen (15) of the Small Business Act (15 U.S.C. 637) for developing policies and procedures consistent with Federal statutes to provide policy direction for minority, women-owned, small, and disadvantaged business (S/DBE) participation in the Department's procurement and Federal financial assistance activities. The office is also responsible for implementing and monitoring the Department's goals for minority, women-owned and small and disadvantaged businesses. The Secretary of Transportation has encouraged DOT operating administrations to expand opportunities for these entrepreneurs to participate fully in all DOT-funded procurements and assisted programs. This request solicits competitive proposals from organizations classified as minority trade associations and/or minority Chambers of Commerce for participation under OSDBU's Liaison Outreach and Services Program (LOSP). Eligible applicants must be registered

with the Internal Revenue Service as 501 C(6) tax-exempt organizations. OSDBU will enter into Cooperative Agreements with these organizations to provide liaison services between the DOT, its grantees, recipients, contractors, subcontractors, and minority, women-owned; and disadvantaged business enterprises. This Request for Proposals contains information concerning: (1) The principal objectives of the competition, eligible applicants, activities and factors for award; (2) the application process, including how to apply and the criteria used for selection; and (3) a checklist of application submission requirements.

FOR GENERAL AND SPECIFIC INFORMATION CONTACT: Mr. Art Jackson or Mr. David Benton, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW., room 9410, Wash., DC 20590, Tel. (202) 366–2852 or (800) 532–1169.

SEND PROPOSALS TO: Mr. Art Jackson, Financial Analyst, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW., room 9410, Washington, DC 20590.

DATES: Proposals must be received at the above location by June 6, 1994 4 p.m., Eastern Standard Time. Proposals received after the deadline will be considered non-responsive and not reviewed. DOT plans to give notice of awards on all applications by June 30, 1994.

Dated: May 9, 1994.

Luz Hopewell,

Director, Office of Small and Disadvantaged Business Utilization.

Table of Contents

1. Introduction
  1.1 Background
  1.2 Program Description and Goals
  1.3 Description of Competition
  1.4 Duration of Agreements
  1.5 Authority
  1.6 Eligibility Requirements
2. Program Requirements
  2.1 Recipient Responsibilities
  2.2 Work Requirements
  2.3 Office of Small and Disadvantaged Business Utilization Responsibilities
3. Submission of Proposals
  3.1 Content and Format for Proposals
  3.2 Address, Number of Copies, Deadline for Submission
4. Selection Criteria
  4.1 General Criteria
  4.2 Scoring of Applications
Application Form for Proposals—Appendix A Attachments

SUPPLEMENTARY INFORMATION:

1. Introduction

1.1 Background

The United States Department of Transportation (DOT) established the Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. The OSDBU administers the Department's Small and Disadvantaged Business Enterprise (DBE) Program which is designed to ensure that small businesses, including small disadvantaged and minority firms, have an equitable opportunity to participate in DOT's procurement and Federal financial assistance programs and that they receive a fair share of the resulting contract awards. Because DOT's policy is to encourage and increase DBE participation in the contracts and programs that it funds, during FY 1993, DBEs received over $2.6 billion or 14.4 percent of highway, transit, air and rail contracts from DOT-assisted State and local transportation agencies.

OSDBU develops Department-wide policy and administers a number of programs and activities to implement the OSDBU's Congressional mandate of increasing the level of participation of DBEs in the Federal financial assistance and direct contracting programs of all modal administrations of DOT. OSDBU's Direct Contracting and Financial Assistance Division (DC/FA) is responsible for the development and implementation of an effective program of activities directed at ensuring DBE participation in the Department's direct procurement and Federal financial assistance activities. This division monitors all DOT procurement activities that involve the participation of DBEs, including the goal settings and procurement practices of DOT financial assistance recipients, namely, State and local transportation agencies. The division also serves an important function in assisting firms in their marketing of the Department and all of its operating administrations. OSDBU's Minority Business Resource Center (MBRC) is responsible for developing and administering programs to encourage, stimulate, promote and assist DBEs to obtain and manage transportation-related contracts, subcontracts and projects. The MBRC administers the Short Term Lending Program (STLP) and the Bonding Assistance Program, two financial assistance efforts which provide assistance in obtaining short-term working capital and bonding for DBEs. Under the STLP, lines of credit up to $500,000 are available at prime interest rates to finance accounts receivable for transportation-related contracts. The Bonding Assistance Program enables DBEs to apply for bid, performance and payment bonds on contracts up to $1,000,000.

1.2 Program Description and Goals

An area where the OSDBU has focused considerable efforts has been that of increasing DBE access to DOT financial assistance programs and contracting opportunities through the Liaison Outreach and Services Program (LOSP). This broad-based initiative utilizes Cooperative Agreements with a number of minority Chambers of Commerce and minority trade associations to provide liaison services between DOT, its grantees, recipients, contractors, subcontractors and DBEs. The LOSP includes activities such as information dissemination, outreach services, conference and seminar participation and referrals to technical assistance agencies (i.e., MBDCs, SBDCs and State DOT highway supportive services contractors) which offer management and technical assistance in financial assistance, marketing and other business areas. In addition, the minority organizations include DOT and other transportation-related information in their monthly or quarterly newsletters and provide one-on-one business counseling to DBEs currently doing business or that have the potential for doing business with DOT at the Federal, state or local levels.

Information dissemination and outreach include the distribution of the following DOT marketing materials: DOT Bonding Assistance Program Brochures; DOT Bonding Assistance Fact Sheets; DOT Short-Term Lending Program Brochures; DOT Short-Term Lending Fact Sheets; Procurement Forecasts; DOT Small Business Subcontracting Opportunities Directory; Contracting with the United States Department of Transportation Booklets; DOT Bonding Assistance Program Applications; and DOT Short-Term Lending Program Applications. A compilation of these materials is available in the DOT's Marketing Information Package, a comprehensive document which serves as a resource and reference tool.

Participating LOSP organizations make referrals to technical assistance agencies offering assistance to DBEs in the completion and submission of Short-Term Lending and Bonding Assistance Program applications.

The LOSP was established by the OSDBU in May 1992 in response to the

continuing need to outreach to the small and minority business community and increase their participation in DOT contracting and financial assistance programs. To address this need, the LOSP seeks to increase the number of small businesses and DBEs that enter into transportation-related contracts and that receive DOT STLP lines of credit and bonding assistance. This goal is accomplished by the OSDBU working closely with minority Chambers of Commerce and minority trade associations to:

(1) Establish a communications link between DOT, its grantees, recipients, contractors, subcontractors and the small and disadvantaged business community.

(2) Increase awareness of DOT contracting opportunities and financial assistance programs by disseminating DOT marketing materials and relevant information at selected conferences, seminars and marketplace events.

(3) Develop and/or strengthen linkages with State DOTs, local transportation agencies, transportation prime contractors, State highway supportive services contractors, Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs) and other minority Chambers of Commerce and minority trade associations to encourage DBE participation in DOT programs.

(4) Stimulate referrals of DBEs to obtain technical assistance from Federal, State and local agencies such as MBDCs, SBDCs and State DOT highway supportive services contractors for management and other business-related assistance including completion and submission of DOT Short-Term Lending Program and Bonding Assistance Program application packages.

(5) Increase awareness of DOT programs by providing DOT representation at selected conferences, seminars and marketplace events and by providing DOT ads and articles in organizations' newsletters.

(6) Develop and maintain databases of transportation-related DBEs as potential participants in DOT procurement and/or financial assistance programs.

1.3 Description of Competition

The purpose of this RFP is to solicit proposals from eligible national and regional minority Chambers of Commerce and minority trade associations to participate in the Liaison and Outreach Services Program (LOSP). The LOSP shall enable the OSDBU to establish a regional presence by assisting small businesses and DBEs in securing information on DOT procurement opportunities, Financial Assistance Programs and the short-term lending and bonding assistance programs to increase the number of DBEs that enter into transportation-related contracts. The LOSP is intended to increase collaboration between OSDBU, minority Chambers of Commerce and minority trade associations to strengthen and enhance their ability to provide liaison services between DOT, its grantees, recipients, contractors, subcontractors and DBEs. As the program requirements and selection criteria indicate, the OSDBU also intends that the LOSP be multi-dimensional; that is, the selected organizations must have the capacity to effectively access and provide supportive services to the broad range of small business and DBE clients within their respective geographical areas and must be able to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources and avoid duplication of effort.

Cooperative agreement awards will be up to $95,000. It is DOT's intent to fund one agreement in each of ten (10) regions, however, there may be multiple awards, if warranted. The geographical distribution of DOT regions is shown in map form in Attachment 1. The DOT regions, with states and territories comprising each, are listed below:

Region 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region 2: New Jersey, New York, Puerto Rico

Region 3: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region 6: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region 7: Iowa, Kansas, Missouri, Nebraska

Region 8: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region 9: Arizona, American Samoa, California, Guam, Hawaii, Nevada

Region 10: Alaska, Idaho, Oregon, Washington

1.4 Duration of Agreements

Cooperative agreements will be awarded for a period of 12 months (one year) with a one year renewable option. Continuation funding will be contingent upon satisfactory performance and the availability of funds in subsequent fiscal years.

1.5 Authority

DOT is authorized under 49 U.S.C. 322 (Pub. L. 97–449), to develop by Cooperative Agreements, support mechanisms including liaison and assistance programs, that will enable small businesses and DBEs to take advantage of transportation-related contracts.

1.6 Eligibility Requirements

An eligible applicant organization will be: An established, non-profit, minority Chamber of Commerce or minority trade association which has the documented experience and capacity necessary to successfully operate and administer a coordinated, regional liaison outreach effort within a region of the United States.

In addition, to be eligible, a minority Chamber of Commerce or minority trade association must:

(a) Be an established 501 C(6) tax-exempt organization (provide documentation as verification);

(b) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, management and marketing assistance services and referral to technical assistance agencies to DBEs within the LOSP regional service area in which proposed services will be provided; and

(c) Have an office physically located within the LOSP regional service area.

No application will be accepted without proof of tax-exempt status.

2. Program Requirements

In conducting the activities to achieve the goals of the LOSP, the recipient shall be responsible for implementing the activities under 2.1 and 2.2 below. The OSDBU shall be responsible for conducting activities under 2.3.

2.1 Recipient Responsibilities

1. Each LOSP participant shall: (a) Collaborate with and coordinate on programs, activities, services and technical assistance with other Federal, State and local organizations and agencies serving transportation-related small businesses and DBEs, particularly State DOTs and DOT grantees.

(b) Initiate, develop and maintain interagency referral arrangements with agencies offering specialized management and technical assistance including DOT/state supportive services contractors, MBDCs, SBDCs and other appropriate programs.

(c) Establish a transportation advisory committee comprised of members who have demonstrated expertise in the preparation of financial statements and bid/proposal development to advise on

the development and implementation of LOSP activities.

(d) Conduct one (1) regional conference to address contracting opportunities within DOT modal administrations and from state and local transportation agencies within the region.

(e) Develop structured, consultative relationships with key constituent groups within the region to help build and reinforce collaboration. Such relationships will ensure that DOT non-minority and minority prime contractors as well as minority Chambers of Commerce and minority trade associations facilitate awareness and utilization of LOSP services.

(f) Implement information dissemination and education activities and strategies to maximize outreach regarding DOT procurement opportunities and the short-term lending and bonding assistance programs.

(g) Conduct an on-going evaluation of activities funded through this cooperative agreement. Evaluation will quantitatively and qualitatively describe LOSP activities, the services and the recipients of services. Each applicant must develop and implement an on-going evaluation plan.

(h) Develop structured, consultative relationships with the private sector financial community and Federal, State, regional and local agencies which provide specialized financial technical assistance services to DBEs.

(i) Establish and maintain an 800 toll free line to be made available to minority, women-owned, small and disadvantaged businesses interested in transportation-related procurements and information on the application process for the DOT Short Term Lending and Bonding Assistance Programs. Referral services shall be provided.

(j) Furnish all labor, facilities and equipment to perform the services described in this announcement.

2.2 Work Requirements

Each LOSP participant must perform work in the following functional areas:

(a) Information Dissemination and Outreach
(b) Conference and Seminar Participation
(c) Referrals to Technical Assistance Agencies
(d) Database Development

a. Information Dissemination and Outreach

Each LOSP program director shall meet with OSDBU officials to become familiar with DOT materials and literature to disseminate appropriate documents to DBEs at conferences, seminars, workshops, and to those interested in and have the capacity to perform transportation-related projects. This LOSP "core service" includes distribution of general information on DOT's overall DBE program, specific information on DOT's short-term lending and bonding assistance programs; and information and assistance on DOT's procurement opportunities. Materials to be disseminated shall include, but are not limited to, fact sheets, brochures, short-term lending and bonding assistance program applications, and reports and advertisements which are directed toward the DBE communities in each region.

The LOSP participant shall publish stories/articles and features in the recipient's newsletter which contain information regarding the accessibility to procurement opportunities within DOT, and the short-term lending and bonding assistance programs. The Director, OSDBU, shall approve all stories, articles, and special features prior to their publication in the recipient's monthly or quarterly newsletter.

b. Conference and Seminar Participation

The LOSP participant shall participate in regional, state and local procurement conferences on behalf of the OSDBU and disseminate DOT procurement information, short-term lending and bonding assistance program literature and other materials. The conferences/seminars shall be transportation-related and each shall be approved by the Director, OSDBU, prior to participation. The LOSP participant shall identify regional, state and local conferences where a significant number of DBEs with transportation-related capabilities are expected to be in attendance. The LOSP participant shall maintain the DOT booth at transportation-related conferences/seminars. A list of proposed DBE conferences and seminars being considered for participation under the Cooperative Agreement shall be forwarded to OSDBU for review and approval.

The LOSP participant shall conduct one (1) regional conference and shall be responsible for all conference planning and logistics which include identifying and contacting DBEs, mailing invitational letters, handling details for exhibit booths and luncheons, preparing conference brochures as well as tentative and final conference agendas, and securing media coverage. A conference report shall be submitted to OSDBU no later than 30 days after the conference.

c. Referrals to Technical Assistance Agencies

Each LOSP participant shall provide technical assistance services by referring DBEs to agencies that offer assistance in the preparation of DOT procurement documents and applications for loans and bonds for submission on transportation-related projects. In addition, specific referrals shall be made to agencies that certify DBEs using DOT guidelines.

d. Database Development

Each LOSP participant shall develop a comprehensive data base of firms within its regional service area that have the capability to perform transportation-related contracts.

2.3 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

The OSDBU shall perform the following roles as its contribution to the attainment of LOSP objectives:

1. Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.
2. Provide orientation and training to applicants awarded funding for participation in the LOSP.
3. Systematically monitor the performance of successful applicants' activities and program compliance.
4. Assist successful applicants in collaborating and developing or strengthening linkages with State DOTs, technical assistance agencies and DOT grantees within regional geographical areas served.
5. Facilitate the exchange and transfer of successful LOSP activities and program information among regional LOSP participants.

3. Submission of Proposals

3.1 Content and Format for Proposals

Each proposal submitted to DOT must be in the format and must contain the information set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization (as defined in § 1.6 of this announcement) shall submit only one proposal for consideration by DOT.

Applications should be double spaced, and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction,

plus four bound copies, should be submitted. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission.

Proposals should be submitted to: Art Jackson, Office of Small and Disadvantaged Business Utilization, Department of Transportation, 400 7th Street, SW., room 9410, Washington, DC 20590.

Proposals must be received by DOT/OSDBU no later than June 6, 1994, 4 p.m., EST.

4. Selection Criteria

4.1 General Criteria

DOT will use the following criteria to rate and rank applications received in response to this announcement for the applicant's region. Applications will be evaluated for each region on a point system (maximum number of points = 100). The following five (5) maximum weighted categories will constitute DOT's selection criteria:

—Approach (25 points)
—Linkages (25 points)
—Organizational Capability (25 points)
—Staff Capabilities and Experience (15 points)
—Cost (10 points)

A. Approach and Linkages (50 Points)

1. *Approach (25 Points).* The applicant must describe the activities proposed to be implemented under the cooperative agreement and how the work will be accomplished across the LOSP regional area. Present a well-constructed plan of action. DOT will consider the extent to which the proposed objectives are specific, measurable, time-phased, consistent with LOSP goals and the proposed activities are consistent with the applicant organization's overall mission. DOT will give priority consideration to applicants that demonstrate innovation and creativity of approach in increasing the ability of DBEs to access information on DOT contracting opportunities and financial assistance programs. DOT will also rate the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives.

2. *Linkages (25 Points).* DOT will consider innovative aspects of the applicant's approach which build upon the applicant's strength(s) and facilitate and encourage linkages to existing resources available within the region. The applicant's structure for linking urban and rural DBEs to the LOSP should be outlined. The applicant should describe support and intended collaboration on LOSP activities from DOT grantees, prime contractors, subcontractors, State DOTs, State highway supportive services contractors, SBDCs, MBDCs and colleges and universities serving minorities including Historically Black Colleges and Universities (HBCUs), Hispanic Association of Colleges and Universities' affiliations (HACUs) and Tribal-Affiliated Colleges and Universities (TACUs). DOT will also rate the effectiveness of the applicant's strategy to provide outreach, networking and liaison activities to the regional area to be served. In rating this factor, DOT will consider the extent to which the applicant demonstrates ability to effectively access and network supportive services to the broad and diverse range of DBEs within the applicant's regional service area. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to identified needs that can be successfully carried out within the period of this agreement and a plan for forming and involving an internal transportation advisory committee in the execution of that strategy.

B. Organizational Capability (25 Points)

The applicant organization must have outreach resources and relevant experience in carrying out the purposes of the LOSP. In rating this factor, DOT will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of minority businesses in general and transportation-related DBEs in particular. The applicant must also describe the technical and administrative resources it plans to use in achieving proposed objectives (i.e., computer facilities, voluntary staff time, space and financial resources).

C. Staff Capabilities and Experience (15 Points)

The applicant organization should provide a list of proposed personnel for the project with salaries, educational levels and previous experience delineated. The applicant's project team must be well-qualified and knowledgeable (ensuring diversity) which shows evidence of the ability to deal effectively with the broad range of DBE clients to be served. Resumes must be submitted for all proposed key personnel, outside consultants and subcontractors, Experience of key personnel in providing services similar in scope and nature to the proposed effort must be presented in detail. The Project Director will serve as the responsible individual for the project a minimum of 50 percent of his/her time. He/she must be designated in the proposal and his/her resume must reflect appropriate knowledge of the regional area and supervisory experience.

DOT will consider the extent to which the applicant's proposed management plan (a) clearly delineates staff responsibilities and accountability for all work required and (b) presents a work plan with a clear and feasible schedule for conducting all project tasks.

D. Cost (15 Points)

The budget is the applicant's estimate of the total cost of establishing and administering its participation in the LOSP. The applicant's budget must be adequate to support the project and costs must be reasonable in relation to project objectives. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

4.2 Scoring of Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category not to exceed the maximum number of points allowed for each category. Applications which are not responsive to the established criteria above will be disqualified.

Appendix A—Application Form for Proposals for the Department of Transportation, Regional Liaison Outreach and Services Program (LOSP)

Proposals for the DOT Regional Liaison Outreach and Services Program (LOSP) should contain all of the following information and should be submitted in the following format.

Applications should be double spaced and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, plus four bound copies, should be submitted. Applications, excluding attachments, will be limited to 35 pages. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application should be included in a single submission, forwarded directly to the address listed below. Proposals should be submitted to: Art Jackson, Office of Small and Disadvantaged Business Utilization, Department of Transportation, 400 7th Street, SW., room 9410, Washington, DC 20590.

Proposals Must be Received by DOT/OSDBU no Later than June 6, 1994, 4 p.m. EST.

All applications must contain the following sections in the following order.

1. *Table of Contents*—Identify all parts, sections and attachments of the application.
2. *Application Summary Page*—Provide a one page overview of the following:
   —The applicant's proposed LOSP, its related activities including key elements of the plan of action/methodology to achieve project objectives.
   —The applicant's relevant organizational experience and capabilities.
3. *Understanding of the Work*—Provide a narrative which contains specific project information as follows:
   —The applicant will describe its understanding of the LOSP, program goals and the role of the applicant's proposed LOSP in advancing the applicant's goals.
   —The applicant will describe specific outreach needs of transportation-related DBEs in the region served and how the LOSP will address the identified needs.
4. *Approach/Methodology*
   —Describe the applicant's methodology or plan of action for conducting the project in terms of the tasks to be performed.
   —Describe the specific services or activities to be performed and how these services/activities will be implemented.
   —Describe innovative and/or creative approaches to be implemented through the LOSP to increase the ability of DBEs to access information on DOT contracting opportunities and financial assistance programs.
5. *Linkages*
   —Describe outreach activities and linkages to be implemented to ensure that rural small and minority disadvantaged businesses participate in LOSP activities.
   —Describe or indicate evidence of linkages or collaborations developed or to be developed with State DOTs, DOT grantees, DOT prime contractors, other minority Chambers of Commerce as well as minority trade associations and technical assistance agencies including DOT/FHWA supportive services contractors, MBDCs and SBDCs and minority institutions including HBCUs, HACUs and TACUs.
6. *Organizational Capabilities*
   —Describe recent, relevant and successful experience in advocating for and addressing the needs of small and minority businesses in general and transportation-related DBEs in particular.
   —Describe relevant experience in working or collaborating with minority Chambers of Commerce and minority trade associations, DOT grantees, State DOTs, technical assistance agencies including DOT/FHWA supportive services contractors, MBDCs, SBDCs and minority institutions including HBCUs, HACUs and TACUs.
   —Describe internal resources available to use in successfully performing/completing the work.
7. *Staff Capabilities*—Describe the qualifications and relevant experience, in relation to project requirements, of the key personnel to be used in the project.
8. *Management Plan*—Describe how personnel are to be organized in the project and how they will be used to accomplish project objectives. Outline staff responsibilities, accountability and a schedule for conducting all project tasks.
9. *Budget Narrative*—Outline all proposed budget/cost information in detail.
10. *Assurances Signature Form*—Complete the attached form identified as Attachment 2.
11. *Certification Signature Form*—Complete the attached form identified as Attachment 3.
12. *Standard Form 424*—(Request for Federal Assistance). Complete the attached Standard Form 424 identified as Attachment 4.

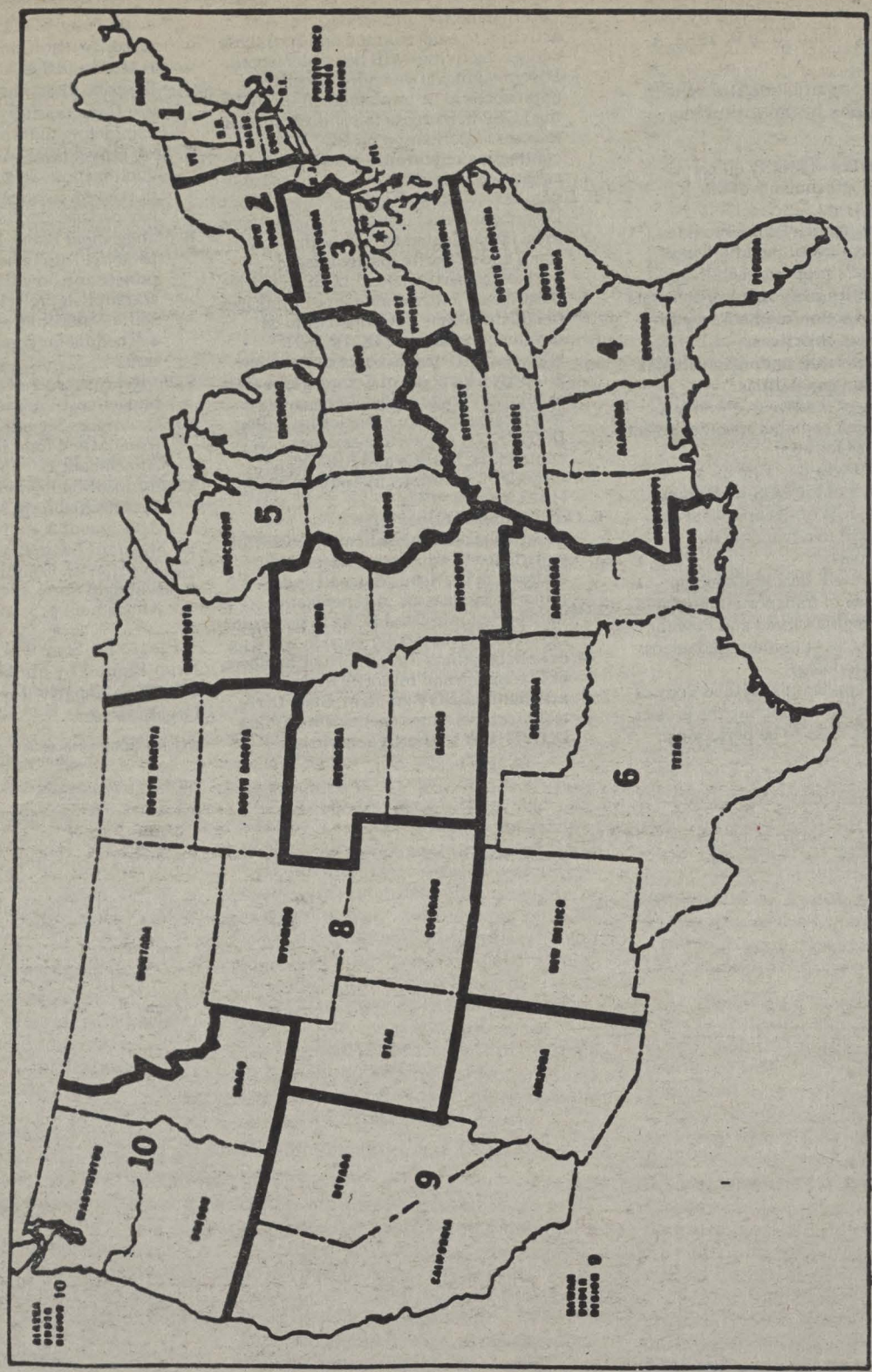
Please Be Sure That All Forms Have Been Signed by an Authorized Official Who Can Legally Represent the Organization.

BILLING CODE 4910–62–P

ATTACHMENT 1

LIAISON OUTREACH & SERVICES PROGRAM
L O S P

GEOGRAPHICAL BOUNDARIES (REGIONAL)



U.S. DEPARTMENT OF TRANSPORTATION (DOT)
OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION
OSDBU

ATTACHMENT 2

Assurances

All recipients of Federal funding are required to assure that the recipient:

- 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.

- Will establish safeguards to prohibit employees from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

- Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

- Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900; Subpart F).

- 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 disability; (d) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C.290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the National and Community Service Act of 1990, as amended; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

- 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.

- 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.

- Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a and 276a-77), 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 sub-agreements.

- 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 the 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.

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 (Clean Air) Implementation Plans under Section 176(c) of the Clean 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).

- 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.

- 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-l et seq.).

- 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.

- 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.

- 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.

- Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular A-133. Audits of Institutions of Higher Learning and other Non-profit Institutions.

- Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

In addition, all recipients of Corporation assistance under this application are required to assure that the recipient:

- Will keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation.

- Will not use the assistance to replace State and local funding streams that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year

- Will use the assistance only for a program that does not duplicate, and is in addition to, an activity otherwise available in the locality of the program.

- Will comply with the Notice, Hearing, and Grievance Procedures found in § 176 of the Act.

- Will comply with the nondisplacement rules found in § 177(b) of the Act. Specifically, an employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the employer using an AmeriCorps participant; a service opportunity shall not be created that will infringe on the promotional opportunity of an employed individual; an AmeriCorps participants shall not perform any services or duties or engage in activities that (1) would otherwise be performed by an employee as part of the employee's assigned duties, (2) will supplant the hiring of employed workers, (3) are services or duties with respect to which an individual has recall rights pursuant to a collective bargaining; agreement or applicable personnel procedures; or (4) have been performed by or were assigned to any presently employed worker, an employee who recently resigned or was discharged, an employee who is on leave, an employee who is on strike or is being locked out, or an employee who

is subject to a reduction in force or has recall rights subject to a collective bargaining agreement or applicable personnel procedure.

Assurances - Signature

By signing this assurances page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the attached Assurances.

NOTE: This form must be signed and included in the application.

Organization Name

_____

Project Name

_____

Name and Title of Authorized Representative

_____

Signature

_____

Date

_____

Certification Instructions

By signing the Certification Signature Page on the previous page, the applicant certified that it will agree to perform all actions and support all intentions stated in the Certifications.

Signing the Certification Page

1. Inability to Certify. The inability of a person to provide the certification required below will not necessarily result in denial of a grant. The applicant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Corporation determination whether to enter into this transaction. However, failure of the applicant to furnish a certification or an explanation shall disqualify such applicant for a grant.

2. Erroneous Certification. The certification in this clause is a material representation of fact upon which reliance was placed when the Corporation determined to enter into this transaction. If it is later determined that the applicant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Corporation may terminate this transaction for cause or default.

3. Notice of Error in Certification. The applicant shall provide immediate written notice to the Corporation to whom this proposal is submitted if at any time the applicant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. Definitions. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. An applicant shall be considered a "prospective primary participant in a covered transaction" as defined in the rules implementing Executive Order 12549. You may contact the Corporation for assistance in obtaining a copy of those regulations.

5. Certification Requirement for Subgrant Agreements. The applicant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Corporation.

6. Certification Inclusion in Subgrant Agreements. The applicant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the Corporation, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. Certification of Subgrant Principals. A grantee may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A grantee may decide the method and frequency by which it determines the eligibility of its principals. Each grantee may, but is not required to, check the Nonprocurement List.

8. Prudent Person Standard. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a grantee is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Non-Certification in Subgrant Agreements. Except for transactions authorized under paragraph 6 of these instructions, if a grantee knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

ATTACHMENT 3

Certifications

Before completing certification, please read Certification Instructions on the following page.

Certification - Debarment, Suspension, and Other Responsibility Matters. This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(1). The applicant 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 covered transactions by any Federal department or agency,

(b). Have not within a three-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 anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction or records, making false statements, or receiving stolen property,

(c). Are not presently indicted for 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 three-year period preceding this application proposal had one or more public transactions (Federal, State or local) terminated for cause or default;

(2). Where the applicant is unable to certify to any of the statements in this certification, such applicant shall attach an explanation to this application.

Certification - Drug-Free Workplace. This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, 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 agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment (see 34 CFR Part 85, Section 85.615 and 85.620). The grantee certifies that it will provide a drug-free workplace by:

(1). 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;

(2). Establishing a drug-free awareness program to inform employees about --

(a) the dangers of drug abuse in the workplace,

(b) the grantee's policy of maintaining a drug-free workplace,

(c) any available drug counseling, rehabilitation, and employee assistance programs, and

(d) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3). 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 (1);

(4). Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will

(a) abide by the terms of the statement, and

(b) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(5). Notifying the Corporation within ten days after receiving notice under subparagraph (4)(b) from an employee or otherwise receiving actual notice of such conviction;

(6). Taking one of the following actions, within 30 days of receiving notice under subparagraph (4)(b) with respect to any employee who is so convicted--

(a) Taking appropriate personnel action against such an employee, up to and including termination; or

(b) 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;

(7). Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

Certification - Lobbying Activities

As required by Section 1352, Title 31 of the US Code, the applicant certifies that:

A. 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 of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. 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;

C. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Certification -- Signature

Before You Start. Before completing certification, please read Certification Instructions.

NOTE: This form must be signed and included in the application.

Signature. By signing this Certification page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the Certifications set forth above. The three Certifications are:

- •Certification: Debarment, Suspension, and Other Responsibility Matters
- •Certification: Drug-Free Workplace
- •Certification: Lobbying Activities

Organization Name

_____

Project Name

_____

Name and Titled of Authorized Representative

_____

Signature

_____

Date

ATTACHMENT 4

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):
_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐
TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 REV 4-88
Prescribed by OMB Circular A-102

.1A

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:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if 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.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

[FR Doc. 94–11150 Filed 5–9–94; 8:45 am]
BILLING CODE 4910–62–C

Coast Guard

[CGDO8–94–011]

Houston/Galveston Navigation Safety Advisory Committee; Solicitation for Membership

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice: solicitation for new members.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Houston/Galveston Navigation Safety Advisory Committee. Present appointments will expire October 1, 1994.

DATES: Requests for applications should be received no later than June 15, 1994. Completed applications should be returned no later than July 15, 1994.

ADDRESSES: Persons interested in applying should write to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander Eighth Coast Guard (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

SUPPLEMENTARY INFORMATION: The Commission shall consist of eighteen members, who have particular expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels in the inshore and the offshore waters of the Gulf of Mexico:.

(1) Two members who are employed by the Port of Houston Authority or have been selected by that entity to represent them.

(2) Two members who are employed by the Port of Galveston or the Texas City Port Complex or have been selected by those entities to represent them.

(3) Two members from organizations that represent shipowners, stevedores, shipyards, or shipping organizations domiciled in the State of Texas.

(4) Two members representing organizations that operate tugs or barges that utilize the port facilities at Galveston, Houston, and Texas City Port Complex.

(5) Two members representing shipping companies that transport cargo from the Ports of Galveston and Houston on liners, break bulk or tramp steamer vessels.

(6) Two members representing those who pilot or command vessels that utilize the Ports of Galveston and Houston.

(7) Two at-large members who may represent a particular interest group but who utilize the port facilities at Galveston, Houston, and Texas City.

(8) One member representing labor organizations which load and unload cargo at the Ports of Galveston and Houston.

(9) One member representing licensed merchant marines, other than pilots, who perform shipboard duties on vessels which utilize the port facilities of Galveston and Houston.

(10) One member representing environmental interests.

(11) One member representing the general public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, aids to navigation, and other related topics dealing with navigation safety in the Houston/Galveston areas as required by the Coast Guard. The committee normally meets three times a year at various locations in the Houston/Galveston area. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership will not exceed the expiration of the charter, October 1, 1996.

Dated: April 29, 1994.

J.C. Card,

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

[FR Doc. 94–11225 Filed 5–9–94; 8:45 am]
BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–94–18]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before May 30, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 3, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 23869

Petitioner: Strong Enterprises, Inc. & the Relative Workshop, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a)

Description of Relief Sought/Disposition: To extend the termination date of Exemption No. 4943, which would allow Strong Enterprises, Inc., and the Workshop, Inc. to continue to allow their respective employees, representatives, and other volunteer experimental parachute test jumpers under their direction and control to make parachute jumps.

Docket No.: 27235

Petitioner: United Airlines
Sections of the FAR Affected: 14 CFR Part 121, Appendix H
Description of Relief Sought/ Disposition: To amend Exemption No. 5807, which would allow United Airlines to add relief to authorized pilot in command training and checking to the exemption and to delete conditions 3 and 4 of the exemption.

Docket No.: 27539
Petitioner: Seaborne Seaplane Adventures
Sections of the FAR Affected: 14 CFR 135.173
Description of Relief Sought/ Disposition: To permit ProMech to operate its DeHavilland Twin Otter aircraft without weather radar or thunderstorm detection equipment in the Caribbean.

Docket No.: 27625
Petitioner: Robert M. Wilbur, Jr.
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition: To permit Mr. Wilbur to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27641
Petitioner: Seawind
Sections of the FAR Affected: 14 CFR 21.24(a)(1)(ii)
Description of Relief Sought: To allow issuance of a type certificate for amphibious primary category aircraft that exceed 2700 pounds.

Docket No.: 27666
Petitioner: William H. Williams
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Williams to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27668
Petitioner: George Lee Meyners
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Meyners to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27676
Petitioner: Clifford E. Magnor
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Magnor to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Dispositions of Petitions

Docket No.: 27599
Petitioner: Seaborne Seaplane Adventures
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought/ Disposition: To continue operating its DeHavilland Twin Otter aircraft without Ground Proximity Warning Systems (GPWS) after the April 20, 1994, mandatory compliance date.
DENIAL, 4/18/94, Exemption No. 5872

Docket No.: 27645
Petitioner: Trans World Express, Inc.
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought/ Disposition: To permit Trans World Express, Inc. (TWE) to operate aircraft registration number N3108 without a ground proximity warning system (GPWS) installed therein until April 23, 1994.
GRANT, 4/21/94, Exemption No. 5883

Docket No.: 27692
Petitioner: Air Anguilla, Inc.
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought: To continue operating its one DHC–6 Twin Otter aircraft without Ground Proximity Warning Systems (GPWS) after the April 20, 1994, mandatory compliance date.
DENIAL, 4/20/94, Exemption No. 5877

Docket No.: 27706
Petitioner: Northwest Express Regional Airlines
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought: To permit NERA to operate its fleet of 20 Fairchild Metro III airplanes after April 20, 1994, without an operational ground proximity warning system (GPWS).
GRANT, 4/20/94, Exemption No. 5878

Docket No.: 27707
Petitioner: Air Vegas, Inc.
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought/ Disposition: To permit Air Vegas to operate its four Beechcraft Be-C99 aircraft with an inoperative Airtell Centaurus ground proximity warning system (GPWS)
GRANT, 4/20/94, Exemption No. 5879

Docket No.: 27716
Petitioner: Gulfstream International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought: To permit Gulfstream International Airlines, Inc. to operate four Beachcraft Be–C99 aircraft without having a CIC 8800M Encoder for its ground proximity warning system (GPWS).
GRANT, 4/20/94, Exemption No. 5882

Docket No.: 27718
Petitioner: Arizona Airways, Inc.
Sections of the FAR Affected: 14 CFR 135.153
Description of Relief Sought: To allow Arizona to operate its two Beechcraft 1300 aircraft with an inoperative Sunstrand Data ground proximity warning system (GPWS).
GRANT, 4/20/94, Exemption No. 5884

[FR Doc. 94–11279 Filed 5–9–94; 8:45 am]
BILLING CODE 4910–13–M

Amendments to Passenger Facility Charge (PFC) Approvals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Amendments to PFC Approvals.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IV of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is to publish the amendments to those PFC approvals under part 158, § 158.37 (a) and (b)(1). These amendments have been approved through March, 1994. Future amendments will be published with the regular monthly notice.

Public Agency: Muscle Shoals Regional Airport Authority, Muscle Shoals, Alabama.
PFC Record of Decision Approval Date: February 18, 1992.
Amendment Number: 92–01–C–01–MSL.
Amendments: Deletes Taxiway B phase III, Increases the estimated cost of the terminal building renovations to $40,000, Reduces the estimated cost of the access road to $30,000, Increases the estimated cost of taxiway B-phase II to $30,000, Reduces the total amount to be collected from $104,100 to $100,000.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Jackson Airports District Office, (601) 965–4628.

Public Agency: Port of Oakland, Oakland, California.
PFC Record of Decision Approval Date: June 26, 1992.
Amendment Number: 92–01–I–01–OAK.
Amendments: Modifies the project description and increases the total approved PFC collection from $780,000 to $4,780,000, Increases the total approved PFC revenues to be collected from $12,343,000 to $16,343,000 to cover increases in project costs, Charge expiration date has been extended from September 1, 1993 to April 30, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: City of Palm Springs, Palm Springs, California.

PFC Record of Decision Approval Date: June 25, 1992.

Amendment Number: 92–01–C–01–PSP.

Amendments: Increases the total PFC revenue to be collected from $44,612,350 to $81,888,919 to cover increases in project costs and PFC administration costs, Changes the estimated expiration date from October 30, 2022, to October 30, 2032, Modifies from two projects (terminal expansion phase 1A and terminal expansion phase 2) to a single terminal expansion project with a 10-year implementation program.

FOR FURTHER INFORMATION CONTACT: John P. Milligan, Western-Pacific Region Airports Division, (310) 297–1029.

Public Agency: City of San Jose, San Jose, California.

PFC Record of Decision Approval Date: June 11, 1992.

Amendment Number: 92–01–C–01–SJC.

Amendments: Increases the amount approved for use on project 27, noise attenuation from $25,728,826 to $30,073,826, Changes the estimated charge expiration date to August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Rodiquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Lee County Port Authority, Fort Myers, Florida.

PFC Record of Decision Approval Date: August 31, 1992.

Amendment Number: 92–01–C–01–RSW.

Amendments: Increases the amount approved for professional services for the extension of runway 6/24, etc., from $1,500,000 to $2,590,500, Increases the amount approved for a Part 150 noise compatibility study from $45,000 to $132,000.

FOR FURTHER INFORMATION CONTACT: Orlando Airports District Office, Bart Vernance, (407) 648–6583.

Public Agency: Lee County Port Authority, Fort Myers, Florida.

PFC Record of Decision Approval Date: May 10, 1993.

Amendment Number: 93–02–U–01–RSW.

Amendment: Increases the amount approved for the FIS/Commuter Terminal from $787,000 to $919,750.

FOR FURTHER INFORMATION CONTACT: Orlando Airports District Office, Bart Vernance, (407) 648–6583.

Public Agency: Greater Orlando Aviation Authority, Orlando, Florida.

PFC Record of Decision Approval Date: November 27, 1992.

Amendment Number: 92–01–C–01–MCO.

Amendments: Increases the estimated cost of the roadway to the southern connector to $6,635,000, Reduces the estimated cost of the international passenger terminal/landside Federal Inspection Services facility to $111,575,000, Increases the estimated cost of the west ramp rehabilitation/taxiland A rehabilitation to $4,200,000, Increases the total amount of PFC collection to $10,108,000 to cover interest on bridge loans, Reduces the total amount to be collected from $167,574,527 to $154,617,527.

FOR FURTHER INFORMATION CONTACT: Orlando Airports District Office, Bart Vernance, (407) 648–6583.

Public Agency: Panama City-Bay County Airport and Industrial District (District), Panama City, Florida.

PFC Record of Decision Approval Date: December 1, 1993.

Amendment Number: 93–01–I–01–PFN.

Amendment: Increases the amount of PFC to collection from $7,422,988 to $8,238,499 to cover PFC administration costs.

FOR FURTHER INFORMATION CONTACT: Orlando Airports District Office, Bart Vernance, (407) 648–6583.

Public Agency: Dubuque Airport Commission, Dubuque, Iowa.

PFC Record of Decision Approval Date: October 6, 1992.

Amendment Number: 93–01–C–01–DBQ.

Amendments: Increases the PFC revenue approved for collection from $108,500 to $148,500 to cover increases in project costs, Changes the estimated charge expiration date to May 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, Central Region Airports Division, (816) 426–4728.

Public Agency: Clark County Department of Aviation, Las Vegas, Nevada.

PFC Record of Decision Approval Date: February 24, 1992.

Amendment Number: 91–01–C–01–LAS.

Amendments: Increases the amount approved for collection from $428,054,380 to $754,192,500 to cover financing costs, Changes the estimated charge expiration date from February 1, 2004, to January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Lawton Metropolitan Area Airport Authority, Lawton, Oklahoma.

PFC Record of Decision Approval Date: May 8, 1992.

Amendment Number: 92–01–C–01–LAW.

Amendments: Revises PFC level from $2.00 to $3.00, Increases the total PFC revenue to be collected from $334,078 to $482,135, Changes the estimated charge expiration date from January 1, 1996 to March 31, 1996.

The following projects have been modified:

a. *Amended:*
(1) Construct phase I, terminal expansion,
(2) Acquire aircraft rescue and firefighting (ARFF) vehicle and mechanical lift device,
(3) Install emergency power generator and electric security gates,
(4) Reconstruct ARFF access roads.

b. *Deleted:*
(1) Engine runup apron and runway distance-to-go markers,
(2) T-hangar taxiways and general aviation drainage improvements.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: City of Austin, Austin, Texas.

PFC Record of Decision Approval Date: June 4, 1993.

Amendment Number: 93–01–C–01–AUS.

Amendments: Revises PFC collection level from $2.00 to $3.00, Changes the estimated charge expiration date from June 1, 1995, to December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 624–5979.

Issued in Washington, DC, May 2, 1994.

Donna Taylor,

Manager, Passenger Facility Charge Branch.

[FR Doc. 94–11282 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Miami International Airport, Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

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

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary J. Dellapa, Aviation Director of the Dade County Aviation Department at the following address: Miami International Airport, Concourse E, Fifth Floor, Miami, Florida 33122.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dade County Aviation Department under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Airports Plans & Programs Manager, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397, (407) 648–6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 3, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Dade County Aviation Department for the Board of County Commissioners of Dade County, Florida was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 27, 1994.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: November 1, 1994
Proposed charge expiration date: July 31, 1996
Total estimated PFC revenue: $64,770,000
Brief description of proposed project(s):
Impose and Use Projects:
- Concourse A Phase 1A
- Concourse A Phase 1B
- Concourse A Phase 1 Apron & Utilities
- Ground Transportation Improvements (GTI)—C2

Impose Only Projects:
- Concourse A Phase II
- Concourse A Phase II Apron & Utilities

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dade County Aviation Department.

Issued in Orlando, Florida on May 3, 1994.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 94–11280 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tupelo Municipal Airport—C. D. Lemons Field, Tupelo, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tupelo Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 10, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

FAA/Airports District Office, 120 North Hangar Drive, suite B, Jackson, Mississipp 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roger L. Blickensderfer, Executive Director of the Tupelo Airport Authority at the following address:

631 Jackson Ext., suite A, Tupelo, Mississippi 38801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tupelo Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Project Manager, FAA Airports District Office, 120 North Hangar Dive, suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tupelo Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 3, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Tupelo Airport Authority was substantially complete within the requirements of § 158.25 of part 158.

The FAA will approve or disapprove the application, in whole or in part, no later than August 6, 1994.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: August 1, 1994
Proposed charge expiration date: September 30, 1999
Total estimated PFC revenue: $461,000
Brief description of proposed project(s): (1) Reconstruct terminal ramp pavement (2) Overlay and groove asphalt runway (3) Expand Airport Terminal Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: none.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tupelo Airport Authority.

Issued in Jackson, Mississippi, on May 3, 1994.

Elton E. Jay,

Acting Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 94–11281 Filed 5–9–94; 8:45 am]

BILLING CODE 4910–13–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Nominations for the Trade and Environment Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Request for Nominations for the Trade and Environment Policy Advisory Committee (TEPAC).

SUMMARY: By Executive Order 12905 of March 25, 1994 (59 FR 14733), the President established in the Office of the United States Trade Representative (USTR) a Trade and Environment Policy Advisory Committee (TEPAC). TEPAC will be composed of representatives from environmental interests groups, industry (including the environmental technology and environmental services industries), agriculture, services, non-Federal government and consumer interests. The Office of the USTR is requesting nominations to the TEPAC. Letters of nomination should be sent no later than June 15, 1994 to Debbie Leilani Shon, Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Christine Collins, Special Assistant for Public Liaison, Office of the United States Trade Representative at (202) 395-6120.

BACKGROUND: By Executive Order 12905 of March 25, 1994 (59 FR 14733), the President established in the Office of the United States Trade Representative (USTR) a Trade and Environment Policy Advisory Committee (TEPAC). The TEPAC will provide the USTR with policy advice on issues involving trade and the environment and will review trade agreements to advise whether and to what extent the agreement promotes the interests of the United States. The Committee should be broadly representative of the key sectors and groups of the economy with an interest in trade and environmental policy issues.

Debbie Leilani Shon,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 94-11381 Filed 5-9-94; 8:45 am]

BILLING CODE 3190-01-M

President's Advisory Committee for Trade Policy and Negotiations and Intergovernmental Policy Advisory Committee Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of closed meeting. The May 10, 1994 joint meeting of the President's Advisory Committee for Trade Policy (ACTPN) and the Intergovernmental Policy Advisory Committee (IGPAC) will be closed to the public.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATES: The meeting is scheduled for May 10, 1994, unless otherwise notified.

ADDRESSES: The meetings will be held at the Old Executive Office Building, Executive Office of the President, from 12 p.m. until 3:30 pm unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Christine Collins, Special Assistant for Public Liaison, Office of the United States Trade Representative, Executive Office of the President at (202) 395-6120).

Debbie Leilani Shon,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 94-11382 Filed 5-9-94; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Percentage To Determine Net Value

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This notice provides information to participants in the Department of Veterans Affairs (VA) loan guaranty program concerning the percentage to be used in determining whether the Secretary will accept conveyance of a foreclosed property. The new percentage is 11.19 percent.

EFFECTIVE DATE: The new percentage is effective December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. (202) 233-3668.

SUPPLEMENTARY INFORMATION: VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, *et seq.* The formulas for determining whether VA will offer the lender an election to convey the property to VA are set forth at 38 CFR 36.4320. A key component of this is the "net value" of the property to the Government, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, administration and resale. Each year VA reviews the average operating expenses incurred for properties acquired under 38 CFR 36.4320 which were sold during the preceding three fiscal years and the average administrative cost to the government associated with the property management activity. Administrative cost is based on the average holding time for properties sold during the preceding fiscal year. Property improvement expenses are estimated on an individual case basis at the time the net value is estimated. VA also includes in the new value calculation an amount equal to the gain or loss experienced by VA on the resale of acquired properties during the prior fiscal year.

VA annually updates the "net value" percentage and publishes a notice of the new percentage in the **Federal Register**. For Fiscal Year 1993, the percentage was 14.16 percent. For Fiscal Year 1994, the percentage will be 11.19 percent, based upon the operating expenses incurred, exclusive of estimated property improvement expenses which are accounted for separately in each case, for Fiscal Years 1991, 1992, and 1993, and property resale experience for Fiscal Year 1993. Accordingly, VA will subtract 11.19 percent for the fair market value of the property to be foreclosed in order to arrive at the "net value" of the property to VA. This new percentage will be used in "net value" calculations made by VA on and after December 10, 1993.

Approved: April 28, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94-11146 Filed 5-9-94; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon., Monday, May 16, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Proposals regarding a Federal Reserve Bank's building requirements.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 6, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–11385 Filed 5–6–94; 11:26 am]

BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on May 13, 1994. The meeting will commence at 9:00 a.m.

PLACE: Occidental Grand Hotel, 75 Fourteenth Street, Ballroom 1, Atlanta, Georgia 30309, (404) 881–9898.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda
2. Approval of Minutes of April 15, 1994 Meeting
3. Consideration and Review of Budget and Expenses for the Six-Month Period Ending March 31, 1994
4. Consideration and Review of Expense Projections for the Period of April 1, 1994 to September 30, 1994
   a. Consideration of Possible Need for Internal Budgetary Adjustment
   b. Consideration of Possible Reallocation of Fiscal Year 1994 Consolidated Operating Budget
5. Presentation on the Project Advisory Group's Recommendations for Corporation Priorities in Allocation of its Fiscal Year 1995 Appropriation
6. Consideration of the Inspector General's Process and Criteria for Selection of the Corporation's Auditor for Fiscal Year 1994
7. Consideration of the Contractual Nature of the Inspector General's Employment

CONTACT PERSON FOR INFORMATION: Patricia Batie 9202) 336–8800

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: May 6, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–11479 Filed 5–6–94; 3:55 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on May 13, 1994. The meeting will commence at 9:00 a.m. It is anticipated the substantive portion of the open session (i.e., deliberation of agenda item number 5) will commence at approximately 10:00 a.m.

PLACE: Occidental Grand Hotel, 75 Fourteenth Street, Atlanta, GA 30309, (404) 881–9898.

STATUS OF MEETING: *Open*, except that portion of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will hear the report of the General Counsel on litigation to which the Corporation is or may become a party. In addition, the Committee will consider and act on internal personnel and operational matters related to the Executive Office, the Office of the General Counsel, the Office of Administration, and the Office of Human Resources/Equal Opportunity, the four offices of the Corporation under the Committee's purview. Finally, the Committee will consider for approval the minutes of the executive session(s) held on April 15, 1994. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5 (a), (e), and (h)].[1] The closing will be certified by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda

Closed Session

2. Approval of Minutes of April 15, 1994 Executive Session
3. Consider and Act on General Counsel's Report on Litigation to Which the Corporation is or May Become a Party
4. Consider and Act on Internal Personnel and Operational Matters

Open Session: (Resumed)

5. Approval of Meetings of April 15, 1994 Meeting
6. Panel Presentation on Diversity In the Workplace In the Legal Services Community
7. Consider Update on the Reauthorization Legislative Process
8. Consider and Act on Proposed Amendments to Part 1607 of the Corporation's Regulations
9. Consider and Act on Whether to Publish Proposed Changes to Part 1607 of the Corporation's Regulations for Public Comment
10. Public Comment
11. Consider and Act on Other Business

[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Dated Issued: May 6, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–11480 Filed 5–6–94; 3:55 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on May 13, 1994. The meeting will commence at 9:00 a.m.

PLACE: Occidential Grand Hotel, 75 Fourteenth Street, Ballroom 3, Atlanta, Georgia 30309, (404) 881–9898.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda
2. Approval of Minutes of April 15, 1994 Meeting
3. Status Report by the Director of the Offices of Program Services and Program Evaluation, Analysis and Review
4. Status Reports on Progress of the PICA and Delivery Workgroups
5. Presentation on the Advocacy Efforts of Legal Services Providers in the State of Georgia
6. Presentation by Representative of the Health Law Task Force of the SE Region
7. Update on the National Support Planning Process

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: May 6, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–11481 Filed 5–6–94; 3:55 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on May 13, 1994. The meeting will commence at 2:00 p.m.

PLACE: Occidental Grand Hotel, 75 Fourteenth Street, Ballroom 2, Atlanta, Georgia 30309, (404) 881–9898.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. The Board will also consult with the President on internal personnel and operational matters. Finally, the Board will deliberate regarding internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), and (7)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d) (e), and (f)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda
2. Approval of Minutes of April 16, 1994 Meeting
3. Welcoming Remarks by Harold G. Clarke, Chief Justice (Ret.), Supreme Court of Georgia
4. Presentation by Representatives of the Legal Services Community Regarding the Provision of Legal Services to Clients in the State of Georgia
5. Chairman's and Members' Reports
6. President's Report
7. Consider and Act on Operations and Regulations Committee Report
8. Consider and Act on Provision for the Delivery of Legal Services Committee Report
9. Consider and Act on Audit and Appropriations Committee Report
   a. Consideration of the Inspector General's Process and Criteria for Selection of the Corporation's Auditor for Fiscal Year 1995
10. Consider and Act on Presidential Search Committee Report
11. Inspector General's Report

Closed Session

12. Consultation by Board with the President on Internal Personnel and Operational Matters
13. Consider and Act on Internal Personnel and Operational Matters
14. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters

Open Session: (Resumed)

15. Public Comment
16. Consider and Act on Other Business

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: May 6, 1994

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–11482 Filed 5–6–94; 3:55 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Presidential Search Committee Meeting

TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Presidential Search Committee will be held on May 14, 1994. The meeting will commence at 8:30 a.m.

PLACE: Occidental Grand Hotel, 75 Fourteenth Street, Dali Room, Atlanta GA 30309, (404) 881–9898.

STATUS OF MEETING: *Open*, except that part of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will, with its Advisory Committee, consider the qualifications of candidates for the position of President of the Corporation. In addition, the Committee will consider for approval the minutes of the executive session(s) held on March 12, 1994 and April 14, 1994.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2) and (6)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a) and (e)]. The closing will be

[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C. 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda
2. Approval of Minutes of April 14, 1994 Meeting

Closed Session

3. Approval of Minutes of March 12, 1994 Executive Session
4. Approval of Minutes of April 14, 1994
5. Consider, With Advisory Committee, Qualifications of Candidates for the Position of President of the Corporation.

Open Session

6. Consider and Act on Other Business

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notice will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: May 6, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–11483 Filed 5–6–94; 3:55 pm]

BILLING CODE 7050–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 2:00 p.m., Thursday, May 12, 1994.

PLACE: Festival Center, 1640 Columbia Road, NW., Washington, DC.

STATUS: Open.

BOARD BRIEFINGS:

1. Insurance Fund Report.
2. Legislative Update.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Final Rule: Amendments to Section 701.32, NCUA's Rules and Regulations, Nonmember Deposits.
3. Final Interpretive Ruling and Policy Statement on Chartering and Field of Membership.

TIME AND DATE: 9:00 a.m., Thursday, May 12, 1994.

PLACE: Board Room, 7th Floor, Room 7047; 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Appeal by Credit Union of Determination under Part 701, NCUA's Rules and Regulations. Closed pursuant to exemption (8).
3. Delegation of Authority. Closed pursuant to exemptions (8) and (9)(B).
4. Personnel Policies. Closed pursuant to exemption (2).

RECESS: 10:30 a.m.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–11344 Filed 5–6–94; 9:01 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 9, 16, 23, and 30, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 9

Monday, May 9

2:30 p.m.
Discussion of Salem Unit 1 Restart (Public Meeting)
(Contact: John White, 215–337–5114)

Wednesday, May 11

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 16—Tentative

Wednesday, May 18

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Minor Procedural Rule Change on Time for Requesting a Hearing Under Part 2, Subpart L
(Contact: Peter Crane, 301–504–1622)

Friday, May 20

10:00 a.m.
Briefing on Status of Thermo-Lag (Public Meeting)
(Contact: Ashok Thadani, 301–504–1274)
1:00 p.m.
Briefing by Nuclear Safety Research Review Committee (NSRRC) (Public Meeting)
(Contact: George Sege, 301–492–3904)

Week of May 23—Tentative

Wednesday, May 25

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 30—Tentative

There are no meetings scheduled for the Week of May 30.

ADDITIONAL INFORMATION: By a 4–0 vote on May 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Salem Unit 1 Restart" (Public Meeting) be held on May 9, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: May 6, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–11438 Filed 5–6–94; 2:07 pm]

BILLING CODE 7590–01–M

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, 7:00 p.m., May 19, 1994—Saturday, 1:00 p.m., May 21, 1994.

LOCATION: Airlie Conference Center, Airlie, Virginia.

STATUS: (Open Session)—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: Approval of Minutes of the Sixty-fourth Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Selection of 1994 National Peace Essay Contest Winners; Annual Program Review.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: (202) 457–1700.

Dated: May 6, 1994.

Charles E. Nelson,

Executive Vice President, United States Institute of Peace.

[FR Doc. 94–11354 Filed 5–6–94; 10:18 am]

BILLING CODE 3155–01–M

Corrections

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[AMS-FV-93-704C]

RIN 0581-AB23

Honey Research, Promotion, and Consumer Information Order and Rules and Regulations Issued Thereunder; Termination of Order Provision and Conforming Correction of the Rules and Regulations

Correction

In rule document 94-10220 beginning on page 22492 in the issue of Monday, May 2, 1994, in the third column, under DATES, in the last line, "May 2, 1994" should read "June 1, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Royalty-in-Kind (RIK) Program

Correction

In notice document 94-9721 beginning on page 19207 in the issue of Friday, April 22, 1994, make the following correction:

On page 19208, in the third column, in the second full paragraph, in the second line, "to" should read "not".

BILLING CODE 1505-01-D

federal register

Tuesday
May 10, 1994

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 317 et al.
Nutrition Labeling; Use of "Healthy" and Similar Terms on Meat and Poultry Product Labeling; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 91-006F-HLTH]

RIN 0583-AB34

Nutrition Labeling; Use of "Healthy" and Similar Terms on Meat and Poultry Product Labeling

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to permit the use of the term "healthy" or any other derivative of the term "health," such as "healthful" or "healthier," on the labeling of meat and poultry products. FSIS is taking this action to provide consumers with accurate, informative labeling on meat and poultry products that conforms with such labeling on other foods. This final rule provides a definition for the implied nutrient content claim "healthy" for individual foods and meal-type products, and is designed to parallel the definition issued by the Food and Drug Administration (FDA) for other foods.

EFFECTIVE DATE: November 10, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

FSIS has examined the economic implications of its final rule on use of the term "healthy" and any other derivative of the term "health" on the labeling of meat and poultry products, as required by Executive Order 12866. FSIS has determined that this final rule is economically significant for purposes of Executive Order 12866.

Regulatory Options

1. *No Definition.* FSIS could choose not to define the term "healthy." However, in its nutrition labeling final rule issued on January 6, 1993, FSIS determined that the term "healthy" is an implied nutrient content claim. If FSIS does not define the term "healthy," its use on labeling, except on those products using the claim in their brand name prior to November 27, 1991, or in a non-nutritional context, would misbrand the food. This option would result in large costs, including labeling costs, and a valuable signal used by consumers to alert them to foods that may assist them in meeting dietary goals would be lost.

FSIS could alternatively decide to propose to reverse its previous determination that use of the term "healthy" is an implied nutrient content claim. However, FSIS could only make such an amendment if it were persuaded that its original determinations were in error. FSIS did not receive any information that would support such a conclusion. Furthermore, such an action would require separate rulemaking, and would not take effect until well after the effective date of the nutrition labeling regulations. Therefore, until FSIS published a final rule, this alternative would have the same impact as not defining the term "healthy."

2. *Different Definition Than Proposed.* FSIS could determine that an alternative definition for the term "healthy" would be more appropriate that that which was proposed. FSIS and FDA simultaneously published proposals that would define the term "healthy." However, the definitions were different. FSIS proposed to link the definition of the term "healthy" to the definition for the nutrient content claim "lean" with an added sodium restriction. Consequently, there would be limits for fat, saturated fat, cholesterol, and sodium. FDA proposed a definition that linked the term "healthy" to definitions for the nutrient content claims "low fat" and "low saturated fat" with restrictions on cholesterol and sodium.

There was overwhelming agreement among commenters that if "healthy" is defined, both FSIS and FDA should adopt uniform criteria so as not to undermine the benefits consumers will ultimately realize through application of the same definition.

Costs of the Final Regulations

FSIS has identified 27 uses of "healthy" or derivatives of the term "health" in brand names, trade names, product lines, or prominent displays on labeling of meat and poultry products. This information was obtained by a search of the FSIS files from its prior label approval system. The manufacturers of these products include five large companies with annual sales of over $50 million and an estimated 20 medium-size companies with annual sales between $5 million and $50 million. FSIS has not identified usage of "healthy" on labeling by small companies with annual sales of less than $5 million. However, based on the percentage of medium-size companies using the term, FSIS estimates that possibly 38 small companies might use "healthy" or derivatives of the term "health" on product labeling. FSIS's Final Regulatory Impact Analysis (FRIA) for nutrition labeling estimates that large companies average 250 labels per company and 2.3 average labels per product; medium companies average 80 labels per company and 2 average labels per product; and small companies average 30 labels per company and 1.5 average labels per product. Based on this information, FSIS found that at most a total of 3,990 labels and 2,100 products could be affected by the final rule. However, FSIS expects that a much lower number of labels will be influenced.

Manufacturers of products not meeting the definition of "healthy" have three options to bring their products into compliance with the regulations: Reformulate, cease marketing, or relabel. Of these three options, complete reformulation would be the most expensive. Assuming, as an upper bound for total costs to the industry, all the estimated 2,100 products that might be affected had to be completely reformulated, the total costs to companies based on initial analytical, administrative, printing, and inventory costs for an 18-month implementation period presented in the FRIA would be $33.1 million for large companies, $18.9 million for medium companies, and $3.6 million for small companies. Not all labeling will be affected and some products could be reformulated with minimal cost.

FSIS examined data for 61 meals from a leading brand name producer. These meals weighed between 7 and 13.5 ounces. Of these, 49 (80 percent) are FSIS-regulated products, and 12 are regulated by FDA. Nutrient values were compared to criteria for maximum fat, saturated fat, and cholesterol levels that meet the "healthy" definition for meals. Only three meals failed to meet the lipid cutoff levels. The three meals—meat loaf, chicken enchilada, and an FDA-regulated manicotti—failed by exceeding the saturated fat cutoff level. Meal sodium contents ranged from 220 to 580 milligrams in the 61 meals so that all could meet the 1994 maximum level of 600 milligrams per serving. When compared to the 1997 phase-in criterion of 480 milligrams, 17 meals (28 percent) failed the sodium test. On the other hand, 72 percent did meet the level.

FSIS staff went to grocery stores to record current label values for other FSIS meal products labeled "healthy" and obtained information on 16 additional meals beyond those of the leading brand. When these 16 meals

were compared to the cutoff level for fat components, four failed by only small amounts. The majority did not meet the 1994 sodium limit of 600 milligrams.

Based on the data reviewed, FSIS believes many meals can easily meet the "healthy" definition for fat, saturated fat, and cholesterol levels. FSIS also believes all meals can be formulated to meet the 1994 sodium criterion of 600 milligrams per serving. Regarding the 1997 phase-in criterion of 480 milligrams, 72 percent of the leading brand meals meet that criterion now. This indicates that it is technologically feasible to formulate products acceptable to current consumer taste.

Individual processed meat and poultry products, such as luncheon meats and frankfurters, will have more difficulty meeting the criteria. Generally, individual processed meat and poultry products can meet the fat, saturated fat, and cholesterol levels when the reference amounts are less than 2 ounces or if they do not contain too much meat or poultry when the reference amounts are over 8 ounces.

Of about 100 individual food product types for which minimum meat and/or poultry contents are established by FSIS's "Standards and Labeling Policy Book," FSIS estimates that approximately one-half could not be labeled as "healthy" if made with lean meat or poultry to meet the minimum meat or poultry content. However, this still leaves many individual food product types with the potential to be labeled "healthy." Furthermore, more foods could be so labeled if made with extra-lean meat or made as nonstandardized versions with less meat or poultry content.

FSIS also examined current labeling values for individual food products now carrying the term "healthy" in the brand name. All luncheon meats met the fat criteria; most did not meet the 1994 sodium criterion of 480 milligrams per reference amount and labeled serving, although they were not far off. None of the products were close to the 360 milligram criterion for 1997. Most soups met the fat criteria, but would need some reformulation to meet the current sodium standard, and would require major reformulation to meet the 1997 sodium criterion of 360 milligrams. Overall, the sodium level will cause the most problem for this food category. Nonetheless, FSIS believes that the market can reach the 480 milligrams and 360 milligrams levels within the timeframes allowed as consumer sodium tastes continue to change.

Under the extra-lean criterion for raw, unprocessed meat and poultry cuts, a limited number of raw meat and poultry cuts will be able to meet the cutoff level for fat, saturated fat, and cholesterol. FSIS is not aware that any of the cuts of meat and poultry that can meet the definition currently are labeled "healthy" in brand names. FSIS believes that the use of the extra-lean criteria for these foods and the resulting healthy status of the very leanest of these products enforce the fact that these foods can be part of a healthy diet. FSIS also notes that the lean meats can be trimmed, prepared, and incorporated into meals so that the resulting meal can be labeled "healthy." Since all single-ingredient muscle meats and poultry are low in sodium, at less than 100 milligrams per 100 grams on both a raw and cooked basis, a maximum sodium restriction is unnecessary.

In conclusion, FSIS recognizes that the above information is not a strict representation of the marketplace, but believes that it gives some expectation of the reformulation problems that will be faced by the industry. Many products, especially meals, will not face major changes.

Some manufacturers might not be able to reformulate their products or may determine that the costs of reformulation are prohibitive. The manufacturers may choose to market their products under a different brand name. New resources must also be expended in marketing the product and in informing consumers that the product has a new name. A brand name is an intangible asset representing capital just as a tangible asset is capital. Brand names act as signals that help consumers identify quality differences and shop more efficiently. Manufacturers invest real resources in developing and maintaining their brand identities.

FSIS acknowledges that it could be a cost to the individual manufacturers of products currently branded "healthy" if the brand names were, in fact, removed from the market. The loss of a brand name could be a societal loss, as is the loss of any productive asset. The price consumers are willing to pay for the product may have been due to consumer misperception about the nutritional profile of the product bearing the term "healthy." Although most of these products are nutritionally labeled, some consumers use the term "healthy" as a signal to buy the product and do not read the information on the nutrition panel on the back of the product.

Manufacturers of those products that make "healthy" claims on products that are not sold under "healthy" brand names may choose to relabel products without the claim when reformulation is either too costly or not technologically feasible. In its FRIA for the nutrition labeling regulations, FSIS determined that average costs of redesigning and printing new labels and inventory losses fell significantly as the compliance period increased. Costs approach zero when the compliance period is long enough so that mandated changes can be accomplished in conjunction with planned labeling changes. FSIS has no information regarding the number of products that make "healthy" claims but do not use the term in the brand name, but assumes this number is not very large for meat and poultry products.

Benefits of the Final Rule

In its cost-benefit analysis for the nutrition labeling regulations, FSIS noted many significant benefits of improved nutrition labeling, including decreased rates of three types of cancer and coronary heart disease. The Agency concluded that, as consumers are given more informative labeling, uncertainty concerning the nutritional value of the foods they eat will decrease, and many consumers will select more nutritious, healthier foods. The improved health status of Americans expected to result from the nutrition labeling rule pertaining to meat and poultry products was estimated to be about $1.6 billion over a period of 20 years.

It is possible that some products that are currently marketed as "healthy" but do not fit the definition may be misleading consumers. Removal of these products from the marketplace may actually increase health benefits to consumers. It is also possible that a small number of products that could assist some consumers in reducing their consumption of fat, saturated fat, cholesterol, or sodium will be unable to bear the claim "healthy," thus potentially reducing benefits. Some products may be reformulated to meet the requirements for the claim, but may lose sales from lack of consumer taste satisfaction. It is expected, however, given the selling power of the term "healthy" and the technological advances present in the food industry, that this rule will increase the number of products bearing the term "healthy."

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in

addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this final rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this final rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The final rule provides a definition for the implied nutrient content claim "healthy" and its derivatives and provides for its use on the labeling of meat and poultry products. Small meat and poultry establishments are exempt from nutrition labeling, provided the labeling of their products bears no nutrition claims or nutrition information.

However, small entities with products that currently bear labeling that FSIS is regulating as a defined implied nutrient content claim, i.e., labeling bearing the term "healthy" or its derivatives that is an implied nutrient content claim under FSIS's regulatory definition of an implied nutrient content claim, may be impacted by this regulation. If such products do not conform to the regulatory definition of "healthy," the labeling would need to be changed so as not to misbrand the product, or the product would need to be reformulated to meet the criteria for the definition. While the term "healthy" has been widely used on labeling, FSIS believes that the number of small entities with products bearing such labeling is not substantial because most of the firms using such labeling are large.

Small manufacturers opting to use the term "healthy" or its derivatives as an implied claim on their labeling, as defined by these regulations, would be required to comply with the nutrition labeling requirements, thereby, incurring the costs associated with such compliance. However, the use of the defined implied nutrient content claim on the labeling would be voluntary. Decisions by individual manufacturers on whether to use the claim on their product labeling would be based on their conclusions that the benefits would outweigh the costs of including such a claim on the labeling. To minimize the impact on firms with products that do not conform to the regulations, FSIS is allowing an 18-month implementation period, with an additional 24 months to achieve a further reduction in sodium levels.

Paperwork Requirements

The final rule specifies the regulations permitting the use of the term "healthy," or any other derivative of the term "health" on the labeling of meat and poultry products. The final rule requires those manufacturers opting to use the term "healthy" or its derivatives as an implied claim on their labeling, as defined by this regulation, to revise their labeling and submit such labeling to FSIS for approval.

The paperwork requirements contained in this final rule have been submitted to the Office of Management and Budget for review.

Background

On January 6, 1993, FSIS published in the **Federal Register** (58 FR 632) final regulations on nutrition labeling for meat and poultry products. These regulations contain, in part, provisions governing use of implied nutrient content claims on product labeling. At 9 CFR 317.313(b) and 381.413(b), FSIS cross-referenced provisions pertaining to nutrient content claims at 21 CFR 101.13(b) to define an implied nutrient content claim as one that either describes a food or ingredient in a manner suggesting a nutrient is absent or present in a certain amount, or suggests the food, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an explicit claim or statement about a nutrient. FSIS did not provide a regulatory provision covering the use of the term "healthy" in its final nutrition labeling regulations.

In that same issue of the **Federal Register** (58 FR 688), FSIS published a proposed rule to solicit comments from the public on regulatory provisions for the definition and use of the term "healthy" or any other derivative of the term "health." FSIS proposed that the implied nutrient content claim "healthy" or any other derivative of the term "health" be permitted on the labeling of meat and poultry products that meet the following criteria: Contain less than 10 grams (g) of fat, less than 4 g of saturated fatty acids, less than 95 milligrams (mg) of cholesterol, and less than 480 mg of sodium per 100 g and Reference Amount Customarily Consumed for individual foods, and per 100 g and labeled serving for meal-type products, as defined in 9 CFR 317.313(l) and 381.413(l). FSIS stated that the proposed rule would apply the criteria for "healthy" to any term used anywhere on the label that includes the term "health." FSIS proposed to include the "healthy" provisions contained in the proposed rule (58 FR 688) in 9 CFR 317.309(j) and 381.409(j). FSIS now believes that the proposed "healthy" provisions were inappropriately placed in a section of the regulations that do not relate to general or specific requirements for nutrient content claims. Therefore, FSIS is correcting that oversight in this final rule by promulgating those provisions at 9 CFR 317.363 and 381.463, which are reserved for nutrient content claim requirements.

On January 6, 1993, FDA also published a proposal (58 FR 2944) that would establish a definition for the implied nutrient content claim "healthy" for foods under its jurisdiction. FDA proposed to permit the term "healthy" to be used on foods that meet regulatory definitions for "low fat" and "low saturated fat," and that do not exceed disclosure levels for cholesterol and sodium. In their final nutrition labeling regulations, FSIS and FDA adopted identical definitions for the express nutrient content claims of "low fat" and "low saturated fat." As defined in 9 CFR 317.362 and 381.462, "low fat" claims may only be made on products containing 3 g or less total fat per reference amount when they are individual foods and per 100 g when they are meal-type products. "Low saturated fat" claims may only be made on products containing 1 g or less saturated fat per reference amount when they are individual foods and per 100 grams when they are meal-type products. As defined in 21 CFR 101.13(h), FDA's disclosure levels for cholesterol are 60 mg per reference

amount and labeled serving for individual foods, 90 mg per labeled serving for main dishes, and 120 mg per labeled serving for meal products. Sodium disclosure levels are 480 mg per reference amount and labeled serving for individual foods, 720 mg per labeled serving for main dishes, and 960 mg per labeled serving for meal products.

Discussion of Comments and Final Rule

FSIS received 47 comments in response to the January 6, 1993, proposed rule (58 FR 688). The majority of the comments (31) were submitted by food manufacturers, while 5 were received from consumer groups; 3 from academia; 2 from professional organizations; 2 from trade associations; 1 from a foreign government; 1 from a State government; 1 from a food retailer; and 1 from a consumer. All comments submitted with respect to the proposed rule were given due consideration. A summary of the comments and FSIS's responses follow.

Use of the Term "Healthy"

Some commenters questioned FSIS's authority to regulate use of the word "healthy." These commenters argued that the term is an adjective which does not characterize the quantity of nutrients in food products. Other commenters wanted use of "health" banned altogether because the term offers shoppers no substantial information on which to base food choices, and is only a marketing tool. A foreign government stated that any differences in nutrition labeling requirements between the U.S. and other countries will create significant trade barriers. A few commenters contended that if "healthy" is not defined, it should not be grandfathered, i.e., used as an implied nutrient content claim as part of brand names in use prior to November 27, 1991, as long as such use is not false or otherwise misleading, but it should be available for use by all companies.

The majority of responses supported defining the term because of current inconsistent usage in the marketplace that serves to confuse and mislead consumers. Several commenters cited the 1992 National Consumers League opinion poll, and another cited internal market research to show that consumers often expect products labeled as "healthy" to be low in nutrients of public health concern, such as fat and sodium. A few manufacturers or products with brand names, trade names, or product lines now containing the term "healthy" advised that their products were specially formulated to be "good for you" and/or control nutrients that health authorities recommend be consumed at decreased dietary levels in order to lessen the risk of diet-related diseases or health conditions. There was overwhelming agreement among commenters that if "healthy" is defined, both FSIS and FDA should adopt uniform criteria so as not to undermine the benefits consumers will ultimately realize through application of the same definition.

FSIS has authority to require nutrition labeling and to regulate the labeling of meat and poultry products based upon the statutory provisions concerning misbranding in the FMIA (21 U.S.C. 601(n)(1)) and the PPIA (21 U.S.C. 453(h)(1)). Under these statutory provisions, an article is misbranded if it is false or misleading in any particular. FSIS agrees with the many commenters who concluded that use of the term "healthy" on the labeling of meat and poultry products conveys a powerful message to consumers about the nutritional attributes of those products. FSIS believes that in the absence of a regulatory definition for the term, its use on product labeling has great potential to be false or misleading to consumers. Accordingly, FSIS is establishing regulatory provisions governing use of the term "healthy" as an implied nutrient content claim. FSIS's intent is not to hamper free trade by this action, but, rather, to eliminate misleading the American consumer through inconsistent use of implied nutrient content claims.

The grandfathering provisions contained in 9 CFR 317.313(q)(1) and 381.413(q)(1) do not exempt defined implied nutrient content claims. Therefore, upon the effective date of this final rule, the term "healthy" or any other derivative of the term "health" may no longer appear as an implied nutrient content claims in brand names of products that were initially marketed prior to November 27, 1991, unless the product meets the regulatory requirements covering use of nutrient content claims.

FSIS and FDA carefully reviewed and assessed their respective comments regarding the need for a uniform definition for "healthy." Both agencies agree with the comments that requested consistency in the FSIS and FDA definition of "healthy," and recognize that having different definitions for the same nutrient content claim could likely lead to consumer confusion and undermine the usefulness and credibility of the claim. FSIS and FDA have jointly reached a decision to establish a uniform definition of the term "healthy" as it applies to all foods regulated by both agencies.

Derivatives and Synonyms

Commenters who addressed applying the criteria for "healthy" to any term that includes the term "health" agreed with FSIS's proposed position to include derivatives of "health" in the definition because they are viewed by consumers as having the same general meaning. Derivatives of "health" include, but are not limited to, the following terms: Healthful, healthfully, healthfulness, healthier, healthiest, healthily, and healthiness.

Several commenters asserted that products with labeling bearing synonymous terms or phrases such as "nutritious," "wholesome," "smart choice," and "foods for today's diets," all of which relay a "good for you" message, should be defined or required to meet the "healthy" definition. FSIS believes that such terms and phrases can be implied nutrient content claims depending on the context in which they are used. However, FSIS does not have sufficient information to establish definitions for such terms or to determine that they are synonyms for "healthy." Therefore, such synonymous terms or phrases are not included in this final rule.

Nutritional Context

Some commenters supported FSIS's proposed approach to treat the term "healthy" as an implied nutrient content claim when it is used in a brand name or elsewhere on the labeling of a product, except as it pertains to general dietary guidance language. For example, one commenter stated that when the term is used without context, either in a brand name or standing alone, or when it is used on labeling that bears other nutrient content claims, it should be presumed, based on scores of examples on the market today, that consumers will believe the term is used in reference to the nutritional properties of the labeled food. Without context, the possible meaning is ambiguous, at a minimum, which should be construed against the manufacturer, who has the opportunity to provide clarifying language if a different meaning is intended.

Other commenters urged FSIS to consider the textual use of the term in determining whether it constitutes an implied nutrient claim, contending that there will be circumstances where the term "healthy" neither explicitly nor implicitly characterizes the level of nutrients in a food. Many were concerned that the vast bulk of published, authoritative guidance

material would be prohibited from use with any USDA-regulated product under FSIS's proposed approach.

After careful review of all comments, FSIS has reconsidered usage of "healthy" on labeling, and concludes that it would not be in the best interest of consumers to preclude use of dietary guidance statements, which frequently include the term "healthy," on the labeling of meat and poultry products. Also, FSIS recognizes that there may be circumstances where the term "healthy" neither explicitly or implicitly characterizes the level of a nutrient in a product, and where it can be placed in proper context, for example, in advertising copy on product labeling. FSIS is now convinced that it should evaluate the term within the context of the entire labeling to determine if it is used as an implied nutrient content claim as provided for in 9 CFR 317.313(b) and 381.413(b).

However, comments strongly suggest that use of the term "healthy" or any other derivative of the term "health" in the brand name of a product or standing alone, including in a phrase, as in a banner or flagged statement, and either with or without other nutrient content claims, might lead consumers reasonably to believe that the labeled product is useful in achieving a total diet conforming to dietary guidelines by virtue of the nutritional attributes of the specific product. While clarifying language might be used to identify non-nutritional meaning, FSIS does not believe that such statements standing alone, which might take the form of "healthy, a big portion" or "healthy, no chemical preservatives," would necessarily negate a nutritional meaning, and consumers might assume reasonably that "healthy" has a double meaning in those situations.

While FSIS agrees that use of the term "healthy" or any other derivative of the term "health" in the brand name of a product or standing alone is not inherently misleading, FSIS believes that such use may be placed in a nutritional context in the absence of other explicit or implied nutrient content claims on the labeling of the product. Products bearing "healthy" in the brand name or standing alone often are advertised and promoted to highlight the fact that they are specially formulated to contain nutrients at levels that will assist consumers to maintain healthy dietary practices. The product lines frequently cover a wide variety of products, and the names are recognized as characterizing products that can help consumers to meet dietary recommendations.

FSIS believes that a nutritional context for a term may be established by written statements, symbols, or vignettes on a product's labeling, and by advertising, promotional materials, or other relevant action. Therefore, FSIS views use of the term "healthy" or any other derivative of the term "health" in a brand name or standing alone to be in a nutritional context, even in the absence of other nutrient claims, when such appearance implies that the product is useful in maintaining healthy dietary practices. A nutritional context would not be established when the term appears in a name listed only as part of the identification of the manufacturer, packer, or distributor as required in 9 CFR 317.2(c)(3) and 381.122 for meat and poultry products, respectively, because associations would be to a company as opposed to a specific product.

Individual Foods

Some commenters requested that FSIS restrict use of the term "healthy" to meal-type products. They argued that the term should be limited to complete meals containing proper proportions of foods from different food groups because the Food Guide Pyramid and other traditional approaches to sound nutrition recommend certain numbers of a variety of foods from several food groups for the average person. Other commenters agreed with FSIS that the definition should not be limited solely to meal-type products because many individual foods have special nutritional attributes that contribute to a healthy diet. FSIS is not persuaded that the definition should be confined to meal-type products, and believes that both individual foods and meal-type products can be used with a variety of foods to assist consumers to achieve a total diet conforming to dietary guidelines.

Uniform Definition

FSIS received numerous comments that suggested definitions for use of the term "healthy" on food labeling. As mentioned previously, there was overwhelming agreement that FSIS and FDA adopt a uniform definition. Both agencies conclude that because of the term's widespread appeal and its potential usefulness in denoting foods than can assist consumers in maintaining healthy dietary practices, the definition should be reasonable and practical. The following discussion addresses fat and saturated fat, cholesterol, sodium, and nutritive value in turn.

1. *Fat and Saturated Fat.* Most commenters who maintained that the term "healthy" should be defined by regulation supported limitations on amounts of fat and saturated fat as prerequisites to use the term on the labeling of meat and poultry products. Some agreed with the proposed criteria of parallel levels for fat and saturated fat, as required for use of the term "lean" without providing further grounds for support other than those presented by FSIS in the preamble to its proposal. The majority of commenters opposed the proposed criteria for fat and saturated fat, on the basis that the levels were too high under most conditions. Other commenters urged FSIS not to apply the same criteria to individual foods as to meal-type products because the latter generally contribute a larger fraction of total daily nutrients and energy than most individual foods.

Some commenters who objected to the proposed definition voiced concern that it might mislead consumers who purchase a product labeled as "healthy" in an effort to minimize their intake of fat and saturated fat. They argued that linking the definition of "healthy" to the definition of "lean" was not appropriate because foods labeled as "healthy" are more than merely foods that can be incorporated into a healthy diet. They asserted that the term "healthy," as understood by consumers and used by manufacturers, should be reserved for those products that are the very best in helping consumers to limit their intake of nutrients of public health concern, such as fat, cholesterol, and sodium.

FSIS has carefully considered these comments, and concludes that the criteria established for use of the term "healthy" on the labeling of meat and poultry products should minimize intakes of fat and saturated fat. FSIS is convinced that products low in fat and saturated fat meet this goal. Accordingly, FSIS has modified the proposed criteria of less than 10 g of fat and less that 4 g of saturated fat to require that products meet the regulatory definitions for "low fat" and "low saturated fat." These new restrictions recognize that a significant characteristic of the American diet is an excess of fat and saturated fat, and will assure consumers that foods labeled "healthy" are among the lowest in fat and saturated fat on the market. Selection of "low fat" and "low saturated fat" criteria for use of the term "healthy" is also responsive to the assertion that individual foods and meal-type products should not be treated uniformly because the latter, by definition, make a substantial contribution to the diet.

One commenter suggested that the fat and saturated fat content of meal-type products be capped at 10 g and 4 g per labeled serving, respectively, to ensure that products labeled as "healthy" are lower in these nutrients than meal-type products bearing competing claims such as "low fat" and "lean." FSIS rejects this suggestion because the "low" criteria are designed to help consumers construct a diet that is consistent with dietary guidelines, and FSIS believes they are adequate to minimize fat intake.

A manufacturer of a line of meal-type products bearing the term "healthy" and exceeding the limit of 12 ounces per serving (container) prescribed at 9 CFR 317.313(l) and 281.413(l) for meal-type products for the purposes of making nutrient content claims requested that limits on fat and saturated fat be indexed up for single-serving meals that exceed 12 ounces in weight. In response, FSIS notes that the "low fat" and "low saturated fat" criteria are indexed on the per-100-g basis. Therefore, FSIS does not perceive a need to evaluate meal-type products that weigh more than 12 ounces on a case-by-case basis for use of the implied nutrient content claim "healthy." Accordingly, FSIS is including meals that weigh more than 12 ounces in the definition of a meal-type product for purposes of using the term "healthy" on the labeling of these products.

2. *Cholesterol.* Most of the commenters who supported limitations on fat and saturated fat also supported limitations on cholesterol so that products labeled as "healthy" would assist consumers to minimize their intake of cholesterol. While some commenters argued for a strict "low cholesterol" criterion, a number agreed that the proposed levels were appropriate because they were not overly restrictive and were consistent with the cholesterol content of muscle meat.

Regarding comments favoring a "low cholesterol" criterion, FSIS is not persuaded that a definition for "healthy" that requires a product to be low in cholesterol is warranted. Such a definition would virtually preclude use of the term on a large majority of food products for the general public that are in the marketplace today—an outcome that would be a disservice to both consumers and manufacturers alike. Dietary guidelines advise consumers to eat a variety of foods, choosing different foods from five major food groups that include vegetables; fruits; grain products; dairy products; and meat, poultry, fish, dry beans, eggs, and nuts. FSIS believes that the "healthy" definition should encompass appropriate foods from all of these food groups in order to be useful to consumers in selecting foods that can be used to construct a healthy diet. Cholesterol is not ubiquitous in the food supply but only found in foods of animal origin. Cholesterol is not present in a number of foods, such as fruits and vegetables, that are included in healthy diets, and dietary reductions in both total fat and saturated fat facilitate reduction in dietary cholesterol. Because FSIS is adopting in this final rule "low fat" and "low saturated fat" criteria for the definition of "healthy," it concludes that a need to require a "low cholesterol" criterion is not justified.

In view of concerns expressed by commenters that criteria for "healthy" should minimize intake of cholesterol, as well as fat and saturated fat, FSIS has reconsidered its proposed criteria for cholesterol. FSIS had proposed a limit of no more than 95 mg per 100 g and per labeled serving (container) for meal-type products. Because these products must weigh at least 6 ounces as defined in 9 CFR 317.313(l) and 381.413(l), they are restricted to less than 95 mg of cholesterol in an entire serving. A commenter observed that it is reasonable to expect meal-type products to contain no more than this level. Even if meal-type products provided a third of a day's food intake, their cholesterol content would have to fall under 100 mg for an individual to consume less than the 300-mg recommended daily intake.

FSIS examined the disclosure level for cholesterol defined by FDA at 21 CFR 101.13(h)(3) for a main dish product, as defined in 21 CFR 101.13(m) and that weighs at least 6 ounces. This level is 90 mg of cholesterol per labeled serving and represents the lowest cholesterol disclosure level for meal-type products of all weights. Because low fat foods generally help individuals in reducing their intake of saturated fat and cholesterol, and FSIS is adopting "low fat" and "low saturated fat" criteria for use of the term "healthy," FSIS concludes that it is reasonable to apply a limitation of 90 mg of cholesterol per labeled serving for use of the term "healthy" on meal-type products. FSIS believes the 90 mg of cholesterol limit used in conjunction with "low fat" and "low saturated fat" criteria combine to set technologically feasible parameters that should encourage manufacturers to design a broad range of these food products. When cholesterol-containing foods such as meat, poultry, fish, eggs, or cheese are components of meal-type products, manufacturers should be able to meet the 90 mg of cholesterol limit by decreasing the amount of cholesterol-containing foods in the products.

Commenters noted that most individual foods play a smaller role in the daily diet than meal-type products so that it is anomalous to apply the same disqualifying levels to both types of products. They stated further that, as it was appropriate for FSIS to develop different nutrient content claim criteria for individual foods and for meal-type products, it is likewise appropriate that this same rationale be applied in defining "healthy." FSIS is now convinced that the cholesterol criterion for individual foods should be lower than the proposed 95-mg limit. FSIS believes that the limit of 60 mg of cholesterol per reference amount customarily consumed and per labeled serving size proposed by FDA for individual foods is a reasonable and appropriate limit to minimize cholesterol intake from these products when considering that the products must also meet "low fat" and "low saturated fat" criteria. Accordingly, FSIS is adopting in this final rule FDA's cholesterol criterion for the definition of "healthy" as applied to individual food products.

3. *Sodium.* While a few commenters suggested that a limit on sodium for a healthy food is unnecessary, most agreed that a limit is appropriate, noting it is widely recognized that the average daily sodium intake of Americans is higher than optimal under the Dietary Guidelines for Americans, and that it is worth striving for the control of sodium in food products. Although some commenters urged FSIS to adopt FDA's proposed limits on sodium, the majority expressed the opinion that FDA's sodium restrictions for meal products, main dishes, and individual foods are too high. They further stated that while FSIS's proposed limits may be reasonable for meal-type products, they are too low for individual food products, in some cases, because they must qualify on the per-100-g basis, as well as per reference amount. A few commenters urged FSIS to adopt "low sodium" criteria for individual foods and meal-type products. One commenter suggested a cap of 480 mg of sodium per labeled serving for meal-type products if "low sodium" criteria are adopted for this category of products.

After review and evaluation of the comments, FSIS concludes that the concept of using disclosure levels as limits on the sodium content in foods labeled as "healthy" does not minimize sodium intake from such products. FSIS believes that a level above 480 mg of

sodium per labeled serving in meal-type products may not be helpful to consumers who might choose products labeled as "healthy" as a means to achieve the recommended daily intake of 2,400 mg of sodium per day. However, FSIS maintains that "low sodium" criteria are overly restrictive because a diet limited to "low sodium" products is not required to meet dietary recommendations. FSIS is not persuaded by the comments to change its proposed sodium criterion for meal-type products. FSIS is convinced that a level of 480 mg of sodium per labeled serving is both appropriate and technologically feasible. FSIS is deleting the per-100-g basis on the sodium criterion for meal-type products because it is superfluous for products that, by definition, weigh over 100 g.

Evidence supplied by commenters shows that many meal-type products currently bearing the term "healthy," or similar terms, on their labeling average well below FDA's proposed cutoff levels of 720 mg of sodium per labeled serving for main dishes and 960 mg for meal products. While a number of the products are at or slightly below the limit of 480 mg of sodium per labeled serving proposed by FSIS, there are a number that exceed this level. A commenter suggested that a sodium limit of 600 mg per labeled serving might be a reasonable level for meal-type products that would provide room for consumption of beverages and snacks throughout the day. Other commenters stressed that it would be counterproductive to establish restrictions on sodium that would diminish consumer acceptance of otherwise healthy products and damage their marketability.

Based on information about the sodium content of meal-type products on the market, FSIS believes that additional time should be afforded manufacturers to reformulate products to meet the level FSIS is adopting. This action minimizes compliance costs, ensures that products will continue to meet consumer expectations, and is consistent with FDA's approach. Accordingly, with regard to use of the term "healthy" on meat and poultry products, FSIS is establishing an interim criterion of 600 mg of sodium per labeled serving for meal-type products. Although this criterion must be met by the effective date of the regulations, FSIS is allowing an additional 24 months for affected parties to comply with the sodium criterion of 480 mg per labeled serving.

Regarding individual foods, several commenters objected to FSIS's proposed criterion of 480 mg of sodium per 100 g as too low in some cases, contending that salt is a necessary addition to processed meats, not a discretionary addition as with other processed food products. One commenter stated that sodium is required for the production, shelf life and safety of processed meats at some minimal level which exceeds 480 mg per 100 g. The commenter further argued that even though potassium salt has been able to replace sodium salt to some degree (up to 40 percent), a level of 700 mg of sodium per 100 g of product could be reached at best. A commenter also suggested that products reflecting a meaningful reduction in a nutrient from a previous recipe should be allowed to qualify for use of the term "healthy."

Based on information received in the comments and discussions with FDA, FSIS concludes that, in order for the definition of "healthy" as it applies to individual foods to be useful in assisting consumers to achieve dietary goals, the amount of sodium permitted should be significantly less than 20 percent of the recommended daily level of 2,400 mg per day, i.e., less than 480 mg per reference amount and labeled serving. A significant reduction in a nutrient, as provided for in 9 CFR 317.313(j) and 381.413(j) for relative claims, is at least 25 percent. However, for the definition of "healthy," the reduction cannot be applied to a particular food because the term "healthy" is not defined as a relative claim, but as an implied nutrient content claim. By applying the significant reduction principle to FDA's sodium disclosure level for individual foods, FSIS arrives at a level of 360 mg (75 percent of 480 mg) per reference amount and labeled serving. Accordingly, FSIS is establishing the sodium criterion for the "healthy" definition as it applies to individual foods at 360 mg per reference amount and labeled serving.

For the same reasons discussed for meal-type products, FSIS believes that additional time should be afforded manufacturers for product reformulation to comply with the criterion of 360 mg of sodium for the "healthy" definition as it applies to individual foods. As with meal-type products, such action minimizes compliance costs, ensures continued product acceptability, and is consistent with the approach FDA is adopting. Accordingly, with regard to use of the term "healthy" on meat and poultry products, FSIS is establishing an interim criterion of 480 mg of sodium per reference amount and labeled serving for products that are individual foods. Although this criterion must be met by the effective date of the regulations, FSIS is allowing an additional 24 months for affected parties to comply with the sodium criterion of 360 mg per reference amount and labeled serving.

Based on the comments submitted and other data it reviewed, FSIS is aware that many meat and poultry products, which are individual foods, exceed the 360 mg of sodium limit. Only a few products meet the limit at this time, while somewhat more meet the interim limit of 480 mg of sodium. Considering the 3½-year phase-in period allowed and the information reviewed, FSIS believes the 360-mg level is a reasonable and practical limit that both minimizes sodium intake and encourages production of improved products. Furthermore, manufacturers have options other than "healthy" to choose other claims such as "light" and "reduced" to describe products that fit into a healthy diet, should their products fail to meet the sodium qualification for the "healthy" definition.

To ensure full compatibility with FDA's sodium criterion for individual foods, FSIS is providing identical allowances for foods with reference amounts of 30 g or less or 2 tablespoons or less, and for dehydrated products that must be reconstituted with water or diluents containing insignificant amounts of nutrients.

4. *Nutritive Value.* In its proposal on use of the term "healthy," FSIS stated that it had solicited comments on use of the term in its proposed rule entitled "Nutrition Labeling of Meat and Poultry Products" published in the **Federal Register** on November 27, 1991 (56 FR 60302). Although FSIS did not propose requirements for essential nutrients in its proposal on "healthy" issued on January 6, 1993, FSIS noted that a few comments were received in response to the November 27, 1991, proposal. Some commenters stated that the term should not only be equated with controlled amounts of fat, saturated fatty acids, cholesterol, and sodium, but that use of the term should also meet the "high" definition for a certain number of micronutrients.

In response to FSIS's proposal on "healthy," some commenters opposed additional definition requirements that a food labeled as "healthy" contain certain specified amounts of essential vitamins, minerals, or other nutrients, on the basis that many nutritious foods might fail to qualify, or that such a requirement might limit a manufacturer's ability to formulate improved products. However, others stated it would be absurd if foods without nutritional value could be labeled as "healthy" while nutrient-

dense lean meat products might fail to qualify because of the inherent fat content of muscle tissue. Most commenters favored an essential nutrient requirement because foods labeled as "healthy" should make a nutritional contribution to the diet, in addition to minimizing intake of nutrients of public health concern. One commenter cited a recent survey by the American Association of Retired Persons showing that 63 percent of respondents said they expect a product labeled as "healthy" to be a good source of some important vitamins and minerals.

Commenters suggested that requirements for six essential nutrients for which labeling disclosure is mandatory, i.e., vitamin A, vitamin C, calcium, iron, protein, and dietary fiber, be established at 10 percent of the Reference Daily Intake or Daily Reference Value, i.e., an amount consistent with the definition for good source of a nutrient, based on the weight of the food product as follows: Meal products should provide at least three of the six nutrients; main dishes should provide at least two of the six nutrients; and individual foods should be a good source of at least one of the six nutrients. Commenters also recommended that requirements for essential nutrients be met prior to nutrient addition to food products, so as to preclude addition solely for the purpose of meeting the criteria for the claim "healthy."

FSIS has carefully considered these comments and suggested requirements, and agrees that products labeled as "healthy" should provide essential nutrients in the amounts recommended by commenters prior to nutrient addition. Accordingly, FSIS is adopting the suggested requirements of meal products, main dishes, and individual foods prior to nutrient addition. To provide consistency with FDA's meal categories on a weight basis, FSIS is applying the requirements per labeled serving suggested for FDA's main dish products to FSIS-regulated meal products weighing at least 6 ounces, but less than 10 ounces, and the requirements per labeled serving suggested for FDA's meal products to FSIS-regulated meal products weighing 10 ounces or more, including those weighing more than 12 ounces.

FSIS interprets nutrient addition as an addition of nutrients specifically to meet the requirements for "healthy." For example, the requirement does not preclude claims on products where a nutrient is added to meet a standard of identity; a nutrient is added for technological purposes, e.g., L-ascorbic acid (vitamin C) in curing meats; a non-meat or non-poultry ingredient fortified in accordance with FDA requirements and policy is used; or an ingredient is used that is a source of a nutrient, such as textured vegetable protein.

Single-Ingredient, Raw Products

Several commenters suggested that FSIS establish a separate category for muscle cuts of meat and poultry based on criteria for "extra lean," which might also be appropriate for fish and game meats under FDA jurisdiction. Based on information submitted by commenters and otherwise available, FSIS believes that a number of meat and poultry products that are individual foods comprised of more than one ingredient readily can be formulated to meet the criteria for fat, saturated fat, and cholesterol that FSIS is adopting. For example, many soups that contain lesser amounts of meat or poultry and certain luncheon products with added water or non-meat ingredients and that have 55-g reference amounts currently meet the criteria.

However, FSIS realizes that single-ingredient, raw meat and poultry products are severely impacted by the restrictions on fat, saturated fat, and cholesterol. Information reported in USDA's Agriculture Handbook No. 8 shows that no single cut of beef, pork, lamb, veal, or chicken could meet all three requirements, and only skinless light meat cuts of turkey could qualify to use the term.

A number of commenters stressed that "healthy" should be defined in such a way that it is consistent with dietary guidelines. They mentioned that many recommendations from public health organizations and the Dietary Guidelines for Americans advise choosing lean meats, fish, and poultry without skin as a means of achieving nutritious diets low in fat, saturated fat, and cholesterol. They further stated that if lean meats cannot be labeled as "healthy" because of the inherent fat content of muscle tissue, there is little incentive for industry to further its research and production of leaner red meat.

FSIS believes that products failing to meet the definition for "healthy" can also have a place in a healthy diet. Choosing lean versus fattier cuts of meats makes it easier for Americans to meet dietary guidelines. FSIS is fully aware that lean cuts of meat and poultry, which of themselves do not meet definitions for "low fat" and "low saturated fat," and do not contain 60 mg or less of cholesterol per reference amount and labeled serving, can be incorporated readily into meal-type products and individual food mixtures that do meet the "healthy" definition. As stated in the preamble to its proposal, FSIS believes that the criteria for "healthy" should not interfere with dietary guidance messages of encouraging consumption of a variety of foods and increased use of lean meats and poultry products.

FSIS is convinced that products labeled as "healthy" should both assist consumers in meeting dietary guidelines, as well as minimize intake of nutrients of public health concern. FSIS finds merit in those comments suggesting that criteria for "extra lean" be considered for use of the term "healthy" in connection with cuts of meat and poultry. Accordingly, FSIS is providing in this final rule that single-ingredient, raw meat and poultry products that meet the requirements for "extra lean" may qualify to use the term "healthy" on the labeling, provided they meet all other requirements to bear the claim. Products qualify for the "extra lean" claim when they contain less than 5 g of fat, less than 2 g of saturated fat, and less than 95 mg of cholesterol per 100 g and per reference amount customarily consumed. Single-ingredient, raw meat and poultry products may meet the "extra lean" requirements in lieu of meeting definitions for "low fat" and "low saturated fat" and the limitation of 60 mg or less of cholesterol per reference amount and labeled serving. Although "extra lean" criteria as applied to single-ingredient, raw products are slightly less stringent than the criteria adopted for processed, multi-ingredient individual food products, they both recognize the inherent nutrient profile of muscle tissue and identify the very leanest of meat and poultry products available to consumers in the marketplace. Thus, "extra lean" criteria meet the goal of minimizing fat intake from this important category of products that are staples in the American diet.

FSIS is not specifying a sodium criterion for single-ingredient, raw meat and poultry products because these products are inherently low in sodium, containing amounts well below the limit established for individual foods.

Implementation Date

In its proposed rule on use of the term "healthy," FSIS advised that it intended to make any final rule that derived from the rulemaking effective the same effective date as the final rule entitled "Nutrition Labeling of Meat and Poultry Products," which is July 6, 1994. FSIS further stated that, if, for some reason, a final rule on "healthy" and similar

terms is not issued in time to meet the same effective date as FSIS's final rule on nutrition labeling, the use of "healthy" and similar terms would be subject to the nutrient content claim provisions set forth in the final rule on nutrition labeling.

In response to comments on the proposed rule, the provisions of this final rule differ from the provisions contained in the proposed rule. The differences are of a magnitude that will require the relabeling, reformulation, and/or reanalysis of some products currently on the market, i.e., those with labeling currently bearing the term "healthy" or any other derivative of "health," and which do not meet the requirements set forth in this final rule.

Therefore, FSIS has decided that sufficient time should be allotted to make any changes necessary for manufacturers to comply with this rule. FSIS has determined that this final rule will be implemented 18 months from the date of its promulgation, with an additional 24 months to achieve further reductions in sodium levels. This 18-month period is the same period as allowed for the nutrition labeling regulations based on comments received from the public on issues related to its implementation date. This timeframe is also consistent with FDA's enforcement strategy as discussed in its companion rulemaking on use of the term "healthy."

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.363 is added to read as follows:

§ 317.363 Nutrient content claims for "healthy."

(a) The term "healthy," or any other derivative of the term "health," may be used on the labeling of any meat or meat food product, provided that the product is labeled in accordance with § 317.309 and § 317.313.

(b)(1) The product shall meet the requirements for "low fat" and "low saturated fat," as defined in § 317.362, except that single-ingredient, raw products may meet the total fat and saturated fat criteria for "extra lean" in § 317.362.

(2) The product shall not contain more than 60 milligrams (mg) of cholesterol per reference amount customarily consumed, per labeled serving size, and, only for foods with reference amounts customarily consumed of 30 grams (g) or less or 2 tablespoons (tbsp) or less, per 50 g, and, for dehydrated products that must be reconstituted with water or a diluent containing an insignificant amount, as defined in § 317.309(g)(1), of all nutrients, the per-50-g criterion refers to the prepared form, except that:

(i) A meal-type product, as defined in § 317.313(l), and including meal-type products that weigh more than 12 ounces (oz) per serving (container), shall not contain more than 90 mg of cholesterol per labeled serving size; and

(ii) Single-ingredient, raw products may meet the cholesterol criterion for "extra lean"in § 317.362.

(3) The product shall not contain more than 360 mg of sodium, except that it shall not contain more than 480 mg of sodium during the first 24 months of implementation, per reference amount customarily consumed, per labeled serving size, and, only for foods with reference amounts customarily consumed of 30 g or less or 2 tbsp or less, per 50 g, and, for dehydrated products that must be reconstituted with water or a diluent containing an insignificant amount, as defined in § 317.309(g)(1), of all nutrients, the per-50-g criterion refers to the prepared form, except that:

(i) A meal-type product, as defined in § 317.313(l), and including meal-type products that weigh more than 12 oz per serving (container), shall not contain more than 480 mg of sodium, except that it shall not contain more than 600 mg of sodium during the first 24 months of implementation, per labeled serving size; and

(ii) The requirements of this paragraph (b)(3) do not apply to single-ingredient, raw products.

(4) The product shall contain 10 percent or more of the Reference Daily Intake or Daily Reference Value as defined in § 317.309 for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition, except that:

(i) A meal-type product, as defined in § 317.313(l), and including meal-type products that weigh at least 6 oz but less than 10 oz per serving (container), shall meet the level for two of the nutrients per labeled serving size; and

(ii) A meal-type product, as defined in § 317.313(l), and including meal-type products that weigh 10 oz or more per serving (container), shall meet the level for three of the nutrients per labeled serving size.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

4. Section 381.463 is added to read as follows:

§ 381.463 Nutrient content claims for "healthy."

(a) The term "healthy," or any other derivative of the term "health," may be used on the labeling of any poultry product, provided that the product is labeled in accordance with § 381.409 and § 381.413.

(b)(1) The product shall meet the requirements for "low fat" and "low saturated fat," as defined in § 381.462, except that single-ingredient, raw products may meet the total fat and saturated fat criteria for "extra lean" in § 381.462.

(2) The product shall not contain more than 60 milligrams (mg) of cholesterol per reference amount customarily consumed, per labeled serving size, and, only for foods with reference amounts customarily consumed of 30 grams (g) or less or 2 tablespoons (tbsp) or less, per 50 g, and, for dehydrated products that must be reconstituted with water or a diluent containing an insignificant amount, as defined in § 381.409(g)(1), of all nutrients, the per-50-g criterion refers to the prepared form, except that:

(i) A meal-type product, as defined in § 381.413(l), and including meal-type products that weigh more than 12 ounces (oz) per serving (container), shall not contain more than 90 mg of cholesterol per labeled serving size; and

(ii) Single-ingredient, raw products may meet the cholesterol criterion for "extra lean" in § 381.462.

(3) The product shall not contain more than 360 mg of sodium, except that it shall not contain more than 480 mg of sodium during the first 24 months of implementation, per reference amount customarily consumed, per labeled serving size, and, only for foods with reference amounts customarily

consumed of 30 g or less or 2 tbsp or less, per 50 g, and, for dehydrated products that must be reconstituted with water or a diluent containing an insignificant amount, as defined in § 381.409(g)(1), of all nutrients, the per-50-g criterion refers to the prepared form, except that:

(i) A meal-type product, as defined in § 381.413(l), and including meal-type products that weigh more than 12 oz per serving (container), shall not contain more than 480 mg of sodium, except that it shall not contain more than 600 mg of sodium during the first 24 months of implementation, per labeled serving size; and

(ii) The requirements of this paragraph (b)(3) do not apply to single-ingredient, raw products.

(4) The product shall contain 10 percent or more of the Reference Daily Intake or Daily Reference Value as defined in § 381.409 for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition, except that:

(i) A meal-type product, as defined in § 381.413(l), and including meal-type products that weigh at least 6 oz but less than 10 oz per serving (container), shall meet the level for two of the nutrients per labeled serving size; and

(ii) A meal-type product, as defined in § 381.413(l), and including meal-type products that weigh 10 oz or more per serving (container), shall meet the level for three of the nutrients per labeled serving size.

Done at Washington, DC, on: May 4, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

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May 10, 1994

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling: Nutrient Content Claims, Definition of Term: Healthy; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 91N-384H]

RIN 0905-AD08

Food Labeling: Nutrient Content Claims, Definition of Term: Healthy

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food labeling regulations to establish a definition for the term "healthy" under the Federal Food, Drug, and Cosmetic Act (the act). This final rule will provide a definition for this implied nutrient content claim and provide for its use on the food label. This action is in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments).

DATES: This regulation is effective May 8, 1994. Before January 1, 1998, the sodium content of individual foods, main dish, and meal products shall be consistent with § 101.65(d)(2)(ii)(A), (d)(2)(ii)(B), (d)(3)(ii)(A), (d)(3)(ii)(B), or (d)(4)(ii)(A), as appropriate. After January 1, 1998, the sodium content of individual foods, main dish, and meal products that bear the claim "healthy" shall be consistent with the requirements in § 101.65(d)(2)(ii)(C)(*1*), (d)(2)(ii)(C)(*2*), (d)(3)(ii)(C)(*1*), (d)(3)(ii)(C)(*2*), or (d)(4)(ii)(B), as appropriate.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5099.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of January 6, 1993 (58 FR 2302), FDA published a final rule entitled "Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definitions of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food" (hereinafter referred to as "the general principles final rule") that, among other things, provided for the use of implied nutrient content claims on the labels and in the labeling of individual foods and meal-type products. While the agency recognized that, as provided by section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A)), a food is prohibited from bearing an implied nutrient content claim on its label or in its labeling unless the claim is defined by FDA by regulation, it was unable to adopt a comprehensive set of definitions for implied nutrient content claims in the general principles final rule because of resource constraints and the strict timeframes under which that rulemaking was accomplished. Although the agency did not establish a comprehensive set of definitions, it did determine, among other things, that the term "healthy" is an implied nutrient content claim when it is used on the label or in labeling in a nutritional context, for example, when it appears in association with an explicit or implicit claim or statement about a nutrient (58 FR 2302 at 2375). The agency said that, for example, in the statement "healthy, contains less than 3 g of fat," "healthy" is an implied nutrient content claim.

Because of the complex nature of this term, the agency concluded that it was not possible to arrive at a final regulation for a definition of the term "healthy" as part of the general principles final rule (58 FR 2302, January 6, 1993). However, in that same issue of the **Federal Register**, FDA published a proposal entitled, "Food Labeling: Nutrient Content Claims, Definition of Term: Healthy" (hereinafter referred to as "the healthy proposal"), to establish a definition for the implied nutrient content claim "healthy" for individual foods, main dishes, and meal products (58 FR 2944, January 6, 1993). The agency tentatively concluded that foods labeled with the term "healthy" could be used with a variety of foods to assist consumers in maintaining healthy dietary practices, that is, to achieve a total diet that conforms to current dietary guidelines. In other words, FDA tentatively concluded that foods bearing a "healthy" claim should be those that, based on their nutrient profile, would assist consumers in achieving dietary recommendations. Consequently, the agency proposed to permit the use of the term "healthy" as an implied nutrient content claim on products that meet the definitions for "low fat" and "low saturated fat" and that do not exceed the disclosure levels for sodium and cholesterol (proposed § 101.65(d)(2) (21 CFR 101.65(d)(2))). (Disclosure levels are defined as levels of total fat, saturated fat, sodium, and cholesterol in a food above which a referral statement is required when the food bears a nutrient content claim (see § 101.13(h) (21 CFR 101.13(h))). The agency further stated that when "healthy" is not used as an implied nutrient content claim, it would be subject to the general misbranding provisions of section 403(a) of the act (58 FR 2944 at 2945).

The agency advised that it intended to make any final rule that derived from the proposal effective on the date of applicability of the general principles final rule and the final rule on mandatory nutrition labeling (i.e., May 8, 1994) (58 FR 2944). However, FDA stated that if for some reason a final rule had not been issued by that date, "healthy" would be subject to the general nutrient content claim requirements for implied claims or the general misbranding clause (58 FR 2944).

In a companion document in the January 6, 1993 issue of the **Federal Register** (58 FR 688), the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) proposed a definition for "healthy" or any other derivative of the term "health" on meat and poultry products. FSIS proposed to permit "healthy" to be used on the label or in labeling of a meat or poultry product that contains less than 10 grams (g) of fat, less than 4 g saturated fat, less than 95 milligrams (mg) of cholesterol, and less than 480 mg of sodium per 100 g and per reference amount customarily consumed (RACC) for individual foods and per 100 g and per labeled serving for meal-type products. FSIS further proposed that any use of the term "healthy," whether in a brand name or in conjunction with a nutrient, must meet this definition.

FDA received approximately 50 letters in response to the "healthy" proposal. Each letter contained one or more comments. The letters were from a wide range of sources, including consumers, consumer organizations, professional associations, State and local government agencies, industry, and industry trade associations. Some of the comments supported various provisions of the proposal. Other comments suggested modifications, revisions, or revocations of various provisions of the proposal. A summary of the comments, the agency's responses to the comments, and a complete discussion of the agency's conclusions with respect to use of the term "healthy" follow.

II. Comments and Agency Response

A. Purpose in Defining "Healthy"

The agency views the term "healthy" as a unique nutrient content claim. This term not only characterizes the level of the nutrients in a food but implies a judgment about the food itself, based on its nutrient profile. Polls and surveys

discussed in the comments that FDA received on the "healthy" proposal show that consumers have many ideas about what this term means. Some believe that it means that the food is low in fat and low in sodium; others believe that the term means that the food is low in cholesterol; while still others believe that the term means that consumption of the food would lead to a healthy diet. Taken together, however, these comments establish not only that "healthy" conveys a strong message about the nutrient content of a food, but that consumers associate it with the nutrient levels that have generally been recommended over the past few years.

The agency finds, therefore, that the fundamental purpose of a "healthy" claim is to highlight those foods that, based on their nutrient levels, are particularly useful in constructing a diet that conforms to current dietary guidelines. As stated in the "healthy" proposal (58 FR 2944 at 2946), and supported by the comments, foods labeled with the term "healthy" should be those that can be consumed to assist consumers in maintaining healthy dietary practices, that is, in achieving a total diet that conforms to current dietary recommendations. Thus, "healthy" is different from other nutrient content claims that FDA has defined in that, while the other nutrient content claims characterize only the level of the nutrient (or, in the case of "light," nutrients) that is the subject of the claim, "healthy" characterizes both the level of the nutrient in a food and, derivatively, the food itself.

1. One comment stated that in order for a definition of "healthy" to be meaningful, unique nutrient criteria should be developed for each food category.

The agency disagrees with this comment. Although the agency would consider it inappropriate if the definition of "healthy" were to exclude an entire category of foods that is recommended in dietary guidelines, FDA believes that to establish different criteria for each food category would not be helpful to consumers. Not only would consumers have to learn that the meaning of the term varied from food type to food type, but they would have to learn what the term meant in each food category if they were to use it in structuring a diet that conforms to dietary recommendations. Such a situation would defeat the purpose of the claim. Instead of being able to rely on the term as one that highlights foods that are particularly useful in structuring a healthy diet, consumers would be left to judge each food's place in the overall diet that they were consuming. For example, if the agency took into account the fact that some dairy products have a higher fat content than some other foods, and that some cheeses have a higher saturated fat content than some other foods, and so forth, consumers would be left with a situation in which even if they ate a significant number of foods labeled as "healthy," they could have no confidence that their intake of these nutrients would be within dietary guidelines.

The agency believes that the definition of "healthy" that it is establishing in this final rule will permit a sufficient number and variety of foods in all food categories to bear the term to help consumers achieve a total diet that is consistent with current dietary recommendations. Thus, the agency is not establishing a definition of "healthy" that is based on unique nutrient criteria for each food category.

2. A few comments stated that the definition of "healthy" should include alternative criteria that the product may meet to be able to bear the term. The comments argued that any product that can bear an approved health claim should be able to bear the term "healthy." These comments asserted that for a food to make a health claim about one of its nutrients, it cannot contain levels of other nutrients that exceed disclosure levels. Thus, a food that can bear a health claim will not contain levels of a nutrient that will increase the risk of diet-related disease to the general population and in that regard represents a healthy food.

The agency rejects these comments. A health claim is based on the relationship of a substance to a specific disease or health-related condition. While the provisions governing health claims do not permit such claims on products that contain nutrients at levels above the disclosure levels (see § 101.14(e)), a product that bears a health claim may not be helpful in assisting consumers in lowering their daily intake of those nutrients that are not the subject of the claim, but of which reduced daily intake has been recommended. While the agency recognizes that Congress anticipated that health claims can be used to reinforce the Surgeon General's recommendations and to help Americans maintain a healthful diet (H. Rept. 101–538, 101st Cong., 2d sess., 9–10 (June 13, 1990)), the fundamental concerns that underlie a health claim are different from those that underlie the definition of "healthy." FDA's goal in defining "healthy" is to define the term in such a way that it will highlight foods that, because of their nutrient content, will be most helpful to consumers in constructing a diet that is consistent with dietary recommendations. The purpose of a health claim, on the other hand, is to make consumers aware of scientifically valid nutrient-disease relationships and of foods that have a level of the nutrient in question such that consumption of the food may help to affect the risk of developing the disease in question.

In some circumstances these purposes overlap. In others they do not. For example, a woman in her 20's may wish to consume foods that are good sources of calcium, even though the levels of fat in such foods would not qualify them to bear a "healthy" claim. Thus, simply because a food qualifies to bear a health claim does not mean that it should also qualify to bear the term "healthy." Consequently, the agency is not granting the comments' request to permit the term "healthy" on foods that qualify to bear a health claim, unless, of course, the product also meets the definition of "healthy."

3. Some comments argued that "healthy" is not an absolute claim but a relative claim, and that it should be regulated as such. These comments stated that when foods in a given product line have been reduced in fat, saturated fat, sodium, or cholesterol, and an appropriate reference food exists, the product should be able to make a "healthy" claim. For instance, according to these comments, if a particular type of fat or oil, such as canola oil, has a lower amount of saturated fat than another type of oil, then the canola oil represents a healthier choice and should be able to bear the "healthy" claim.

The agency disagrees with these comments. As fully discussed above, the purpose of the "healthy" claim is to highlight those foods that, because of their nutrient profile, are useful in assisting consumers in structuring their diets to conform to dietary guidelines. The usefulness of a food labeled "healthy" is not based on how it compares to a similar food, but on how it contributes to achieving a total diet consistent with dietary recommendations. In contrast, the purpose of comparative claims is to distinguish those foods that contain modified levels of the specified nutrient when compared to the level of that nutrient in an appropriate reference food. Thus, the purpose of a "healthy" claim is significantly different from that of a comparative claim. While both types of claims can be beneficial to consumers in structuring their diets, they do different things. Therefore, the agency considers it inappropriate to define "healthy" as a comparative

claim. However, the agency advises that products that bear a comparative claim such as "reduced" and "less" and meet the requirements for a "healthy" claim can bear both terms.

B. Need for Definition

4. A few comments asserted that FDA did not have the authority under the 1990 amendments to define "healthy" because the statute did not set forth an intent or direction to regulate words and expressions that do not relate to the absence, presence, or quantity of nutrients in a food, preventive claims, or curative claims, all of which are subject to scientific verification. The comments further asserted that the 1990 amendments did not authorize FDA to extend express or implied nutrient content claim regulations in a manner that would prohibit words or descriptive free speech that may be useful to consumers in selecting foods that are helpful in achieving a total diet consistent with current dietary recommendations.

One comment from a foreign government advised that its policy is to not allow food products to be described as "healthy," although their labeling may bear statements that the food can be consumed as part of a healthy diet. Thus, the comment argued that such a provision would be a barrier to free trade with the United States.

Other comments supported the agency's position to establish a definition for "healthy." These comments stated that if the term were not defined, products that had the term in their brand names before October 1989 would be permitted to continue to use the term under the "grandfather" provision (§ 101.13(q)(1) implementing section 403(r)(2)(C) of the act) and thus continue to mislead consumers. The comments contended that unevenly restricting usage of the term would allow one company to use "healthy" in a brand name and preclude other manufacturers with equivalent or superior products from using the term.

The agency does not agree with the comments that argued that it does not have authority to define "healthy." Nor is it persuaded by those comments that argued that by establishing a definition for this term, FDA would be prohibiting words or descriptive free speech that could be useful to consumers. Establishment of a definition for "healthy" when it is used in a nutritional context is required by section 403(r)(1)(A) of the act itself. When used in such a context, "healthy" is making an implied claim about the levels of the nutrients in the food; that is, that these levels are such that the food would be useful in achieving a total diet that conforms to current dietary recommendations (56 FR 60421 at 60423, November 27, 1991). Such a claim, under the terms of section 403(r)(1)(A), would misbrand a food unless it is made in accordance with a definition of the Secretary (and, by delegation, FDA) or with one of the other provisions in section 403(r)(2) of the act.

The agency has no intention of depriving consumers of information that may be useful to them in selecting foods that are helpful in achieving a total diet that is consistent with current dietary recommendations. The whole purpose of this rulemaking is to ensure that "healthy" is defined in a way that enables consumers to have confidence that the foods that bear this term will in fact be useful for the purpose highlighted by the comment. The agency also points out, as pointed out by some of the comments, that because "healthy" is an implied nutrient content claim that was in use in the brand names of some foods before October 25, 1989, the term could continue to be used in the brand names of those foods if FDA did not define the term. A survey of those brand names shows, however, that "healthy" means one thing on one product and something else on another (58 FR 2944 at 2946). Thus, it would in fact be contrary to the interest of consumers for FDA not to define this term because continuing use of the term would be in a confusing and inconsistent manner. It would also mean that foods that came onto the market after October 25, 1989, including those that are as, or are even more, useful than those that bore the term before the October 1989 date, would be unable to bear the term. Such a situation makes no sense.

FDA fully considered the question of whether the nutrient content claims regime established by the 1990 amendments interfered with free speech in the nutrient content claims final rule (58 FR 2302 at 2392). The agency concluded that it did not. The discussion of this issue in the nutrient content claims final rule is incorporated herein. The comments that argued that defining "healthy" would prohibit descriptive free speech did not provide any basis for questioning the agency's earlier conclusion. Thus, FDA rejects these comments.

FDA notes that preventive claims and curative claims, mentioned in some of these comments, were not the subject of the 1990 amendments. These claims are drug claims, not food claims. The 1990 amendments addressed only foods.

In response to the comment from the foreign government, the agency recognizes that as a consequence of its decision to define "healthy," some manufacturers may have to maintain dual label inventories for products that are exported to countries that do not permit "healthy" on the label. While it is not FDA's intent to hamper free trade, FDA concludes, based on the considerations that it has set out above, that it is necessary for it to define this term.

5. A few comments urged FDA to regulate the term "healthy" as an implied nutrient content claim regardless of whether it is used in a nutritional context. The comments asserted that such a regulatory approach would provide consistent treatment of the term between USDA and FDA because USDA had not proposed a contextual basis for the use of the term "healthy." Further, the comments argued that to do otherwise could confuse consumers, who are not likely to recognize that the meaning of the term may vary when it appears on different food labels. One of these comments contended that if use of the term is not subject to regulation as an implied nutrient content claim when the use is not in a nutritional context, e.g., when it is used as part of a brand name without accompanying nutrient content claims, FDA will be creating a substantial loophole to the new regulations. The comment argued that this loophole will result in misleading uses of the term in food labeling.

Another of these comments stated that the agency's proposed definition recognizes that the term is, in essence, a nutrient content claim for multiple nutritional characteristics, and that therefore, the agency should not require that there be other statements that create a nutritional context before a "healthy" claim is treated as an implied nutrient content claim. This comment stated that the use of "healthy" in a brand name should also be regulated as an implied nutrient content claim because companies whose products cannot meet the agency's criteria for the term as an implied nutrient content claim will simply place it in their products' brand names and not make any other nutrient claim, as a means of avoiding the agency's definition.

The agency is not persuaded by these comments that "healthy" should be regulated as an implied nutrient content claim when not used in a nutritional context. The comments have not provided the agency with information on which to conclude that consumers would not be able to discern the context in which the claim appears on the label.

The agency does not believe that the term "healthy" inherently implies the absence or presence of a nutrient in a particular amount, or that the food that bears the term necessarily has a nutrient profile that would be helpful to consumers in structuring a diet that conforms to dietary guidelines. Rather, such inferences are likely to be drawn only if the term "healthy" is accompanied by additional language or graphic material or is otherwise presented in a context that explicitly or implicitly suggests that the food has a particular nutrient profile.

FDA believes that when "healthy" is used in a context in which it is not an implied nutrient content claim, the consumer will be able to understand that fact. For example, in the statement "eat lots of fruits and vegetables for a healthy diet," the term "healthy" does not imply the absence or presence of a nutrient in a particular amount, nor does it imply that the food bearing the term is particularly useful in achieving dietary recommendations. Instead, the term is used to provide general dietary guidance. Thus, such a statement would not be a claim subject to the requirements of section 403(r) of the act.

The determination as to whether the use of the term alone or in a brand name conveys a message about the usefulness of the food in achieving dietary recommendations because of its nutrient content is appropriately made on a case-by-case basis. Simply moving "healthy" from a claim elsewhere on the label to the brand name does not necessarily change the context in which the claim is made or cause the term not to be an implied claim. For example, the statement "low in fat" on the label of a food with the brand name "Healthy Bites" would place the term "healthy" into a nutritional context and subject it to the provisions of section 403(r) of the act. Likewise, the statement "high in oat bran," that implies that the food is high in fiber, on the label of a food bearing the term "healthy" in the brand name would place the term into a nutritional context.

Additionally, there may be instances when the use of a vignette on the label of a food bearing "healthy" would place the term in a nutritional context. Furthermore, the term "healthy" in a brand name may be placed in a nutritional context, even in the absence of other label claims, statements, or vignettes, for example, when the brand name covers a variety of products that are advertised and marketed as "healthy" because of their nutrient profile. The agency advises that in such circumstances, the use of the brand name itself is conveying a message to consumers about the nutrient profile of the product. The product line is represented as including foods that are useful in assisting consumers in structuring a diet that is consistent with current dietary recommendations. Thus, the agency is establishing in this final rule a definition for "healthy" when it is used in a nutritional context on the label, in the labeling, or in the advertising for a food product. Such a context is established when "healthy" appears in association with an explicit or implicit claim or statement about a nutrient, or when the term appears in a brand name that by virtue of its use implies that the product is useful in achieving dietary recommendations.

Even when "healthy" is not used in a nutritional context, however, as fully discussed in the "healthy" proposal (58 FR 2944 at 2945), the agency would have significant reservations about the use of this term if it appears on a product that has nutrients at levels that exceed their disclosure levels as established in § 101.13(h). It seems highly unlikely that the use of this term on a product that contains a nutrient at a level that would not assist consumers in maintaining healthy dietary practices would not be misleading.

Consequently, the agency concludes that it is possible that "healthy" could be used in food labeling in a way that would not subject its use to regulation as a nutrient content claim, and the agency's regulatory approach appropriately must recognize that fact. Nonetheless, FDA finds that under section 403(a) of the act, it has ample authority to ensure that "healthy" is not used in a misleading manner, even when it is not used in a nutritional context.

6. In its January 6, 1993, proposal, FDA solicited comment on whether it should adopt a regulation using its authority under the general misbranding sections of the act, sections 201(n) (21 U.S.C. 321(n)), 403(a), and 701(a) (21 U.S.C. 371(a)), to provide further guidance on the circumstances under which use of "healthy" in a context that is not nutritional might be false or misleading and thus misbrand the product. The agency stated that if comments supported adopting such a regulation, FDA would consider doing so in this final rule. In response, two comments stated that FDA should provide further guidance on the circumstances under which use of the term "healthy" might be false or misleading but did not provide suggestions on how such circumstances should be defined. The majority of comments, however, did not ask FDA to provide further guidance. Many comments stated that the guidance in the preamble to the proposal is sufficient to regulate use of the term when it is not an implied nutrient content claim. In addition, some comments stated that it is appropriate to determine on a case-by-case basis whether the term, when not used in a nutritional context, violates the requirements of section 403(a) of the act and thus misbrands the product.

The agency has concluded that the comments have not supported adoption of regulations under section 403(a) of the act on "healthy" when this term is not used in a nutritional context in labeling. Thus, FDA is not establishing additional regulations but will make a determination as to whether the use of the term is false or misleading under section 403(a) of the act on a case-by-case basis.

C. Terms Subject to Definition

7. Several comments requested that FDA extend the definition of "healthy" to terms like "health," "healthful," and other derivatives of "healthy" to be consistent with the use of the term proposed by USDA. A few of these comments asserted that unless the definition of "healthy" applies to the derivatives of this term, consumers will be confused by the use of the derivatives on the labels of products that do not qualify for the "healthy" definition.

The agency finds merit in these comments and concludes that the definition of "healthy" should also apply to the use of any of its derivatives in a nutritional context. The agency believes that derivatives of "healthy" have the same general meaning and connotation as this term and, thus, when used in food labeling may be construed by consumers to imply that the products on which they appear will be helpful in maintaining healthy dietary practices. Therefore, the agency concludes that it is appropriate to require that when any of the derivatives of "healthy" are used in a nutritional context in food labeling, their use be in accordance with the definition of "healthy" in § 101.65.

FDA finds that providing for the use of derivatives of "healthy" in the definition of that term is the logical outgrowth of the proposal. As stated above, USDA proposed this action, and FDA asked in its proposal whether its regulations should be consistent with USDA's. These comments urged that the coverage of the two agency's definitions should be consistent. FDA has concluded that it is appropriate to include the derivative terms in its definition because doing so will promote consistent use of these terms in

the marketplace on both FDA and USDA regulated products.

Accordingly, the agency is revising proposed § 101.65(d)(2) to include derivatives of "healthy" in the definition of that term when they are used to characterize the level of a nutrient in a food. The derivatives of "healthy" include, but are not limited to, the terms "health," "healthful," "healthfully," "healthfulness," "healthier," "healthiest," "healthily," and "healthiness."

8. A few comments urged FDA to extend the definition of "healthy" to terms like "wholesome," "nutritious," "good for you," and "food for today's diet." One of these comments further stated that if FDA adopts a stringent definition for "healthy," and fails to apply it to synonymous terms, the food industry might simply replace "healthy" with these other terms.

While the agency recognizes that terms such as "nutritious," "wholesome," and "good for you" can be implied nutrient content claims when they appear in a nutritional context on a label or in labeling, the agency does not believe that they are necessarily synonymous with "healthy." FDA has concluded, as stated in the general principles final rule (58 FR 2302 at 2375), that it does not have sufficient information to determine whether definitions for the terms mentioned in these comments are needed, and what those definitions should be. The comments to the "healthy" proposal have not provided the agency with the information that it would need to develop definitions or to establish these terms as synonyms for the term "healthy." Thus, the agency is not extending the definition of "healthy" to these terms.

However, the agency advises that when these terms appear in association with an explicit or implicit nutrient content claim or statement about a nutrient, they will be implied nutrient content claims and subject to the provisions of section 403(r) of the act. Thus, the use of such claims, if they are not defined by the agency, or if they are not exempted through the "grandfather" provision, would cause the product to be misbranded and subject to regulatory action. Furthermore, when these terms appear on the label other than in association with an explicit or implicit nutrient content claim or statement about a nutrient, they are subject to regulation under the general misbranding provisions of section 403(a) of the act. Therefore, if a firm is considering using such terms on its label or in its labeling in a nutritional context, it should petition FDA to define the term under section 403(r)(2)(A)(i) of the act.

D. Covered Products

9. Some comments opposed FDA's proposal to define "healthy" on the grounds that this term is more appropriately applied to overall diets that include fresh fruits, vegetables, low fat dairy products, and grains than to an individual food, main dish, or meal product. These comments urged FDA to prohibit the use of the term on food labels because it describes the total diet, is misleading to consumers, reinforces the "good food-bad food" concept, and could easily lead a consumer to overconsume those products labeled as "healthy" rather than consuming a variety of foods. These comments further stated that consumers may rely on the claim rather than on specific information on the food label to determine the place of the food in the total diet. Finally, the comments contended that a "healthy" claim would undermine terms like "low" and "reduced," and that selecting foods labeled "healthy" does not necessarily lead to a healthy diet.

Other comments supported the use of "healthy" on individual foods and meal-type products. These comments asserted that there is no sound reason to limit the use of the term to meals or main dishes. These comments contended that if properly defined and regulated, the claim can be useful in assisting consumers in achieving current dietary recommendations.

A few comments recommended the use of "healthy" only on meal-type products. One comment further stated that the 1990 amendments do not contain language indicating that nutrient content claims may be limited to meals or main dishes.

FDA rejects the comments that argued that "healthy" is more appropriately applied to overall diets than to individual foods, main dishes, or meal products (main dishes and meal products may be referred to collectively as "meal-type products"). As stated in the "healthy" proposal, FDA believes that foods labeled with the term "healthy," whether they are individual foods, main dishes, or meals, can be used with a variety of foods to assist consumers in maintaining healthy dietary practices (58 FR 2944 at 2946). The comments have not provided convincing information to the contrary. In fact, polls and surveys that are discussed in other comments have shown that depending on the context in which the term is used, many consumers perceive "healthy" in food labeling as describing some aspect of the nutrient content of the product. Because consumers perceive the term as describing the nutrient content of the food, the agency concludes that, if accurately defined, the term can be useful in helping consumers select those foods that will promote a diet consistent with dietary guidelines. Thus, the agency concludes that it is appropriate to establish regulations governing use of "healthy" as an implied nutrient content claim when it is used in such a context.

As stated above, the polls and surveys discussed by the comments show that, in a nutritional context, "healthy" conveys a strong message about the nutrient content of a food. One of the goals of the 1990 amendments was to encourage manufacturers to provide a wider selection of foods with improved nutrient content to facilitate diets that conform to guidelines. The agency believes that defining "healthy," particularly in the manner that FDA has done in this final rule, will encourage such innovation. The term will be reserved for those products that, based on their nutrient profile, will be useful in assisting consumers in structuring diets that conform to current dietary recommendations.

The agency recognizes, as stated in one comment, that consumers may tend to rely on the "healthy" claim rather than reading specific information on the label. Thus, the agency accepts that it must define "healthy" in a way that ensures that, even if consumers do not read the full label, foods that bear the term will be useful in structuring a healthy diet. FDA believes that such a definition can be crafted, and that it has in fact done so in § 101.65(d).

The agency further concludes that "healthy" should be permitted on both individual foods and meal-type products. Given the fact that both types of foods make significant contributions to the overall diet, FDA is aware of no reason why consumers should not be appropriately advised about the usefulness of individual foods, as well as of meal-type products, in achieving a healthy diet. If the agency permitted the claim only on foods packaged as meal-type products, those consumers who chose to construct their diet primarily from foods packaged as individual foods would not have the same benefit of assistance in selecting foods that are useful in achieving a total diet that is consistent with current dietary recommendations. FDA finds, in deciding to define "healthy," that such assistance can be appropriately given. Therefore, the agency is rejecting the comments that the use of "healthy" should be limited to meal products.

10. One comment suggested that if the term "healthy" is allowed on meal-type products, FDA should require label statements that state that additional foods such as lowfat milk, fruit, or whole grain bread or rolls be served with the meal, so that at least one serving of all five food groups suggested by the Food Guide Pyramid are included in the meal.

The agency rejects this suggestion. The comment did not provide any information on which FDA could make a finding that the type of label statement suggested by the comment is necessary to ensure that consumers understand the proper place in the diet of a product labeled "healthy" or how the food's use conforms to the recommendations of the Food Guide Pyramid. Consumers who follow the Food Guide Pyramid will have on the label, through the product's statement of identity, the Nutrition Facts declaration, and the ingredient statement, the information necessary to determine the components and nutritional profile of the product, and where the product fits into the Food Guide Pyramid. The agency believes that by using the information available on the label, consumers will be able to determine the basic food groups that are represented among the product's ingredients and the number of servings of each of these food groups that the product contributes. Consequently, the agency believes that consumers will be able to determine the types of food that should be used to supplement the "healthy" product in order to meet the recommendations of the Food Guide Pyramid without any additional information in the labeling.

Thus, FDA is not granting the request that additional label statements be required on products that meet the "healthy" definition. However, the agency will not object if manufacturers choose to offer guidance as to how their product may be used to achieve a diet that conforms with the Food Guide Pyramid, as long as the guidance is not false or misleading.

11. One comment argued that the proposed definition for "healthy" was not appropriate for foods for babies, toddlers, and children. It stated that the nutrients included in the proposed definition (fat, saturated fat, sodium, and cholesterol) may not necessarily be undesirable for infants and young children. This comment urged FDA to establish separate criteria for the use of "healthy" on foods for babies, toddlers, and children. However, the comment did not offer any suggestions on how the claim should be defined.

FDA recognizes that the definition for "healthy" that it is adopting in this final rule is not appropriate for foods for infants and children less than 2 years of age, in part because it is inconsistent with the guidance provided by various health authorities that fat and cholesterol should not be restricted in the diets of infants (Ref. 1). The regulation on general provisions for nutrient content claims provides in § 101.13(b)(3) that nutrient content claims may not be made on foods intended specifically for use by infants and children less than 2 years of age unless a regulation specifically provides for such a claim on such foods. The agency finds that there is nothing in the record of this rulemaking that would support a conclusion that a "healthy" claim should be defined for foods intended for infants and children less than 2 years of age, nor would anything in the record allow the agency to decide what such a definition should be. Accordingly, the agency is not establishing separate criteria for the use of "healthy" on foods for infants and children less than 2 years of age. The agency notes, however, that interested persons may submit a petition under § 101.69 (21 CFR 101.69) with appropriate information that would provide a basis on which the agency could determine that a "healthy" claim would be appropriate on foods for infants and children less than 2 years of age.

12. One comment stated that the proposed regulation governing the use of the "healthy" claim would be inappropriate for restaurant foods because restaurant foods differ markedly from foods sold at retail. The comment asserted that because the portion size of a restaurant food may be adjusted to meet the criteria for the claim, the definition of "healthy" should be on a per ounce basis. If the definition is not established on a per ounce basis, the comment continued, 10 ounces of food in a meal may not be able to bear the term, whereas a 5 ounce portion of the same food would qualify to bear the term. The comment recommended that different criteria be established for restaurant foods so that the larger portions of food served in restaurants would be able to qualify. It suggested that to bear a "healthy" claim, one composite ounce of the main food in the meal should not contain more than 30 percent of its calories from fat and not more than 10 percent of calories from saturated fat. The comment stated that, thus, the overall meal would meet the proposed requirement for "healthy."

The agency advises that there is no basis for the concern expressed in this comment. While FDA recognizes that restaurant foods differ from packaged foods in the manner in which they are prepared and sold, it has determined that the differences between restaurant foods and packaged foods are not so great as to preclude restaurants from making claims based on the same criteria that apply to other foods (58 FR 2302 at 2387). A restaurant food may bear a "healthy" claim if the restaurateur has a reasonable basis on which to believe that the food that bears the claim meets the definition of "healthy" established in this final rule. (Claims made on menus are currently exempt from the requirements of this final rule and are being addressed in an ongoing rulemaking (58 FR 33055, June 15, 1993).)

The reasonable basis can be provided in a number of ways. The restaurateur could show, for example, that he or she relied on a trustworthy cookbook that gave values for the specified nutrients in the finished food, and that such levels comply with the requirements for the "healthy" claim. A restaurateur could also use recognized data bases for raw and processed foods to compute nutrient levels in the foods or meals and then not use methods of preparation that violate the appropriate use of those data bases (e.g., uncontrolled addition of ingredients or inappropriate substitutions of ingredients). Thus, the agency is not providing a different basis for the definition of "healthy" for restaurant foods.

Claims on restaurant foods that are individual foods must be based on the reference amount customarily consumed regardless of the portion size. For restaurant foods that are main dishes or meals, the claims are made on a per 100 g basis for the entire amount of food offered as a portion or a meal. These requirements should preclude the kind of misleading adjustments in serving size described in the comment.

E. The Definition

The agency proposed in the **Federal Register** of January 6, 1993 (58 FR 2944 at 2949), that the term "healthy" be permitted on products that meet the definitions for "low fat" and "low saturated fat" and that do not exceed the disclosure levels for sodium and cholesterol. The agency specifically solicited comment on whether the proposed definition of "healthy" was appropriate, or whether the definition should include a requirement that the food be "low" in a third nutrient i.e., sodium or cholesterol, or if the food should also be "low calorie." In addition, FDA asked for comment on whether a definition that may not permit lean meat and poultry to bear the claim would help consumers to achieve

a total diet that is consistent with current dietary recommendations. Finally, the agency solicited comment on whether a product labeled "healthy" should supply a certain amount of specified essential vitamins, minerals, or other nutrients (e.g., protein).

1. Fat and Saturated Fat

13. Many of the comments supported the "low fat" and "low saturated fat" requirements in the proposed definition of "healthy." These comments agreed with the agency's position that a product labeled "healthy" should have restricted amounts of fat and saturated fat, so that the product will be helpful to consumers in structuring a diet that conforms to dietary guidelines.

Other comments argued that the proposed fat and saturated fat criteria are too stringent. A few of these comments contended that a food may be healthy if it has a moderate amount of fat or saturated fat and is low in other nutrients that also are of public health significance, such as cholesterol or sodium.

A few comments suggested that the definition of "healthy" should be revised so that a product would be allowed to bear the term "healthy" if the amounts of fat and saturated fat do not exceed the disclosure levels for these nutrients. A similar comment suggested that in addition to the disclosure levels as limits for fat and saturated fat, one of these nutrients should meet the "low" criterion. The comment contended that such a definition would provide greater flexibility for manufacturers to educate and assist consumers in maintaining healthy dietary practices.

Another comment recommended that a food should be able to qualify to bear the term "healthy" if it contains one half the disclosure levels for fat and saturated fat. According to the comment, the definition would then be 10 percent daily value (DV) for individual foods, 15 percent DV for main dishes, and 20 percent DV for meals.

The agency disagrees with the latter group of comments and concludes that the "low fat" and "low saturated fat" requirements in the proposal are appropriate for the definition of "healthy." The agency rejects the comment that recommended using one half the disclosure levels as limits for fat and saturated fat. Aside from the fact that the comment did not provide a rationale for why such a definition would assist consumers in achieving diets consistent with dietary guidelines, the agency concludes that such a level would not sufficiently limit the amount of fat and saturated fat in a product labeled "healthy" to assist consumers in achieving dietary recommendations while giving them the flexibility of selecting a variety of other foods. Thus, such a level would defeat the purpose of the "healthy" claim.

As for the use of disclosure levels, FDA finds that such levels cannot be used to limit or lower the daily intake of these nutrients. The disclosure levels established for fat and saturated fat, as well as other nutrients, were not intended to be used to limit or lower the daily intake of these nutrients but rather to ensure that a food that bears a nutrient content claim does not contain a nutrient at a level that may increase the risk of a diet-related disease (56 FR 60537 at 60543). The agency's intent in defining the term "healthy" is to identify those foods that are particularly helpful in constructing a total diet that is consistent with dietary recommendations. FDA considers it likely that individuals will make an array of food choices, and tying the term "healthy" to the disclosure levels would mean allowing this term to appear on foods that will not contribute to achievement of the recommended levels. Such a result would not be consistent with the agency's purposes in defining this term.

The agency finds that the requirements that fat and saturated fat levels meet the "low" definition are appropriate because these restrictions recognize the need to reduce dietary intake of fat and saturated fat as recommended by the Surgeon General and the Food and Nutrition Board (Refs. 2 and 3). Therefore, they will assist consumers in constructing a total diet that is consistent with dietary recommendations. Accordingly, the agency is not revising the criteria that it proposed with respect to the levels for fat and saturated fat in the definition of "healthy."

14. One comment recommended that in addition to the requirement that fat and saturated fat meet the "low" definition, FDA should further limit the amount of these nutrients in main dishes and meal products that qualify to bear the term "healthy." The comment proposed caps of 10 g of total fat and 4 g of saturated fat. In support of the suggested criteria, the comment stated that these caps would serve two purposes:

(1) They would be consistent with USDA's proposed definition of "healthy," thereby avoiding confusion over the different levels of fat and saturated fat that may be in FDA-regulated products labeled "healthy" and USDA-regulated products labeled "healthy"; and

(2) They would assure consumers that "healthy" foods are among the lowest in fat and saturated fat in the marketplace.

The agency has not been persuaded by this comment that further limitations are necessary or appropriate for meal-type products labeled "healthy." As stated in response to the previous comment, FDA believes that the "low" criteria for fat and saturated fat recognize the need to reduce dietary intake of fat and saturated fat. FDA further believes that the "low" criteria are sufficient to assist consumers in restricting their fat and saturated fat intake, without being so restrictive that it would preclude a sufficient number and variety of foods from bearing the claim.

Furthermore, FDA believes that the underlying intent of the comment in recommending caps was really to urge FDA and USDA to establish consistent and uniform definitions to minimize consumer confusion. In fact, the two agencies have consistent definitions of "healthy." Elsewhere in this issue of the **Federal Register**, USDA is establishing a definition of the term "healthy" and its derivatives, as applied to meat and poultry products, that is consistent with the definition that FDA is establishing in this document.

15. Another comment, which also recommended additional criteria for meal-type products, stated that in addition to the "low fat" and "low saturated fat" requirements, foods labeled with the term "healthy" should contain no more than 30 percent of calories from fat and less than 10 percent of calories from saturated fat.

The agency advises that, as discussed in the "healthy" proposal (58 FR 2944 at 2947), the definitions for "low fat" and "low saturated fat" for meal and main dish products, include a second criterion that requires that the food bearing the claim contain no more than 30 percent of calories from fat and less than 10 percent of calories from saturated fat respectively. Consequently, no changes in § 101.65(d) are necessary in response to the comment.

2. Sodium

16. Several comments that supported the proposed requirement that a food bearing the term "healthy" be "low fat" and "low saturated fat" urged the agency to also require that the product meet the definition for "low sodium." One comment cited the results of a national survey conducted by the National Consumers League (NCL) that showed that 81 percent of the respondents thought that a food labeled as "healthy" was low in fat and sodium. The comment contended that, thus, a

definition for "healthy" that does not require the food to be low in sodium is inconsistent with consumer perception. Other comments also cited the NCL survey as well as other surveys that showed that consumers view the term "healthy" as a claim for sodium. Some comments stated that levels for sodium proposed by FDA are not consistent with the Dietary Guidelines' recommendation of limiting sodium intake to 2,400 mg a day. The comments argued that at the proposed levels for sodium, a packaged meal-type product, which typically provides 250 to 450 calories, could provide up to 40 percent of the DV for sodium. This amount of sodium from one meal could easily cause a consumer to exceed 2,400 mg of sodium per day.

Other comments recommended that FDA adopt USDA's proposed limit of 480 mg sodium. Several comments expressed the belief that sodium is a nutrient that is as closely associated with diet-related disease as either fat or saturated fat. They argued, therefore, that "healthy" should represent a substantially reduced level of sodium. Other comments stated that individual foods should meet the "low" definition for sodium (140 mg or less per reference amount), and that meal-type products should contain no more than 480 mg of sodium. One of these comments asserted that a level of sodium above 480 mg may not be helpful to consumers who will consume meal-type products labeled "healthy" frequently as a way of achieving recommended DV's.

Other comments on this issue supported the agency's proposal to permit the term "healthy" on products that did not exceed disclosure levels for sodium. These comments stated that a "low sodium" requirement would disqualify many products that are helpful in assisting consumers to meet recommended dietary goals.

One comment argued that the proposed levels for sodium were too low, and that the agency should not regulate the amount of sodium in products permitted to bear the term "healthy." The comment asserted that sodium is used in food as a necessary processing agent and preservative (e.g., for binding protein, for developing flavor profiles, and for retarding spoilage). This comment argued that there is not yet sufficient research to determine a precise "minimum" or necessary sodium content to guarantee safety against microbiological contamination. In addition, the comment asserted that sodium is used not only to assist in preservation but also for taste. It added that, if the sodium in a product is so low as to render the product tasteless or even bad tasting, consumers will not eat the product or will add salt at the table, which could result in greater sodium intake. The comment asserted that the goal should be to reduce the current overall dietary intake of sodium and not to set a specific sodium requirement that must be met before a product could bear the claim. During the comment review period, this respondent submitted a supplemental comment, restating the concern that the proposed sodium levels were inappropriate. However, the supplemental comment recommended that FDA revise its proposal to permit any product that contained 600 mg or less of sodium and that otherwise met the requirements to bear the claim "healthy." The comment stated that this recommendation was based in part on information that food with lower salt levels may not behave the same as foods with at least 600 mg of sodium with regard to moisture retention, flavor profile, and shelf life. However, the comment did not provide data to support its position.

The agency has considered all of the comments and is persuaded that it is not appropriate to allow individual foods or main dish or meal products that contain amounts of sodium equal to the disclosure level to bear the term "healthy." Based on information received in the comments, FDA finds that consumers expect "healthy" to be a claim for sodium in addition to other nutrients. FDA's proposal to use the disclosure levels as the limit for sodium and cholesterol was premised on its tentative view that to help consumers to comply with dietary recommendations, it was most important to highlight foods with low fat and saturated fat levels, and that it would be adequate to ensure that the amounts of sodium and cholesterol in foods that bore a "healthy" claim did not exceed disclosure levels. Having been persuaded that consumers will be using foods labeled as "healthy" to limit their sodium intake to achieve current dietary recommendations, the agency finds it appropriate to restrict the amount of sodium in a product that qualifies to bear the term. Foods that contain sodium at the disclosure level will not be useful for this purpose. (FDA will discuss cholesterol in the next section of this document.)

While FDA agrees with the comments that argue that "healthy" should only be permitted on products that help the consumer in reducing sodium intake to meet dietary recommendations, FDA has not been persuaded that the best approach in achieving this goal is to incorporate a "low sodium" requirement in the definition of "healthy." FDA concludes that a definition that requires "low" sodium would be too restrictive because such a requirement would disqualify many products that would be useful in maintaining a diet that conforms to current dietary guidelines. Foods such as raw beet greens, canned white corn, canned carrots, many breakfast cereals, legumes, low fat dairy products, and other foods that are useful in following dietary guidelines would be disqualified with a "low sodium" requirement. While FDA recognizes that manufacturers will have to reformulate many of their processed products to meet the definition of "healthy" that it is adopting, the agency is concerned that many processed foods, as well as certain fresh foods, that would otherwise meet the definition would be disqualified with a "low sodium" requirement. The agency believes that for the claim to be useful, foods that are able to bear the term should be of a sufficient number and variety to help consumers achieve a total diet that is consistent with current dietary recommendations.

Further, as stated in the comments, sodium plays an important role in consumer acceptance of a product. FDA believes that if, in addition to the "low fat" and "low saturated fat" requirements, it were to define "healthy" to include a "low sodium" requirement, the appeal of many products would be diminished because of an unacceptable flavor profile, especially in foods where sodium has been added as a flavoring agent to compensate for the removal of fat. Thus, if consumers abandon the product or add salt to taste at the table, the food would lose its usefulness in assisting consumers in achieving dietary recommendations with respect to sodium intake. Thus, the agency has concluded that while the disclosure level is too high for sodium in a food bearing a "healthy" claim, a "low sodium" criterion is not a viable option.

The agency considered the recommendation by one of the comments that the sodium criterion for "healthy" be no more than 600 mg of sodium. It concluded that such a level for individual foods would be inappropriate because it exceeds the disclosure level and would not assist consumers in maintaining healthy dietary practices. Furthermore, such a criterion could cause frequent use of foods labeled "healthy" to result in an overall diet inconsistent with current dietary guidelines. If, for example, an individual at one of four eating occasions were to consume at least four

individual foods that were labeled "healthy," and each contained 600 mg of sodium, he or she would have reached the Reference Daily Intake (RDI) for sodium (i.e., 2,400 mg) in that one eating occasion. Because of the ubiquity of sodium in the food supply, it is unlikely that at the remaining eating occasions all of the foods consumed would be free of sodium. Thus, in the course of a day, the person's overall sodium intake would exceed the RDI and result in an overall diet inconsistent with recommendations.

With regard to meal-type products, a requirement that the food contain no more than 600 mg would be more helpful in meeting dietary guidelines than the disclosure levels of 720 mg and 960 mg for main dishes and meals, respectively. However, 600 mg of sodium in meals and main dishes would not provide consumers with the flexibility of eating other foods that do not restrict the amount of sodium but that can help in other ways to achieve current dietary recommendations. Although the comment that suggested a level of 600 mg raised a concern that lower sodium levels could affect the viability of some products, the agency is not aware of data that establish a threshold level of sodium needed for a wide variety of foods, and the comment did not provide any data to support its claim. While 600 mg sodium may be necessary to produce and distribute certain foods, FDA believes that there is a wide variety of foods for which such a level is not needed. There are currently many individual foods and meal-type products on the market that contain less than 600 mg sodium (Ref. 4).

Based on the comments, the agency is persuaded that a mealtype product bearing the term "healthy" should contain no more than 480 mg of sodium per labeled serving. This level is the level for sodium that USDA is adopting in its definition of "healthy" for meal-type products. Such a requirement is appropriate because it is low enough to ensure that foods that comply with it will be helpful in assisting consumers in achieving current dietary goals and will also give consumers who eat such foods the flexibility to consume foods whose sodium content is not restricted, such as breakfast cereals and some dairy products. At the same time, the agency believes that, based on the sodium levels of products currently available, this level is not so low that it would significantly affect the appeal of meals or main dishes that contain this level of sodium. Thus, the agency is revising its definition of "healthy" in § 101.65(d)(4)(ii)(B) to provide that if the food is a main dish or meal product the level of sodium in the product cannot exceed 480 mg.

With regard to individual foods, the agency has scrutinized the comments in seeking an appropriate level for sodium. As previously discussed, the agency considers it inappropriate to include a "low sodium" criterion in the definition of "healthy." It is not the agency's desire to so narrowly define the term "healthy" that it would disqualify many foods that are recommended to be included in the diet and that could assist consumers in meeting dietary goals. Nor is it the agency's desire to have a definition that permits nutrients at levels that would not be helpful in assisting consumers in achieving current dietary goals. While FDA has been persuaded that the definition of "healthy" should restrict the level of sodium so that foods bearing the claim will be helpful in reaching dietary goals, the agency does not believe that the levels suggested in comments represent appropriate sodium levels for individual foods.

To fulfill the purposes of a "healthy" claim, FDA has concluded that the sodium criterion for "healthy" must be significantly less than the disclosure level that it proposed in the January 6, 1993, issue of the **Federal Register** (58 FR 2944 at 2949) and yet higher than "low sodium." In trying to arrive at such a level, FDA decided to examine the dietary effects of 25 percent and 50 percent reductions from the disclosure level. The agency has determined, as stated in the general principles final rule (58 FR 2302 at 2346), that a reduction of at least 25 percent in the level of the nutrient from the level of the same nutrient in an appropriate reference food is a significant reduction. Applying a 25 percent reduction to the disclosure level for sodium in individual foods, the agency arrived at a level of 360 mg (i.e., 480 mg × .25 = 120; 480 − 120 = 360). Likewise, applying a 50 percent reduction to the disclosure level for sodium in individual foods, the agency arrived at a level of 240 mg.

In evaluating the appropriateness of these levels as a sodium criterion for the term "healthy," the agency found that a level of 240 mg of sodium would, like "low" sodium, disqualify many foods that are recommended to be included in a healthy diet. Thus, the agency rejected this level. However, in evaluating a level of 360 mg of sodium the agency found:

(1) That this level will assist consumers in constructing a diet consistent with dietary guidelines;

(2) That it is an amount of sodium that could be reasonable for a wide variety of foods to use the "healthy" definition without compromising the appeal of the food (Ref. 4);

(3) That the level is not so restrictive that it is likely to disqualify many foods that are recommended to be included in a healthy diet; and

(4) That this level is consistent with the requirement that is being adopted by USDA elsewhere in this issue of the **Federal Register**. Because this level satisfies the criteria for an appropriate sodium level, FDA decided to adopt it.

The agency notes that these factors distinguish the use of a percent reduction from the disclosure level for sodium from the use of a similarly derived level for fat, which the agency refused to do. As stated above, use of a level for fat that is derived from a percent reduction of the disclosure level would not adequately serve the purposes that are to be achieved by a "healthy" claim. However, for sodium, such reduction provides an appropriate level.

Thus, the agency is revising its proposed definition of the term "healthy" in § 101.62 (d)(2)(ii) and (d)(3)(ii) to require that individual foods bearing the claim "healthy" contain no more than 360 mg of sodium per reference amount customarily consumed (reference amount) and per labeled serving.

The agency is concerned, however, that this approach will not effectively control misleading claims on nutrient-dense foods with small serving sizes. The agency has addressed a similar concern in the definition of "low." As fully discussed in the general principles final rule (58 FR 2302 at 2317), the agency concluded that in order to prevent misleading "low" claims on nutrient-dense foods with small serving sizes, a weight-based criterion should be applied to these foods. Thus, the agency adopted a per 50 g requirement for foods with a reference amount of 30 g or less or 2 tablespoons or less. The agency believes that a similar approach is warranted in the definition of "healthy." Without a weight-based criterion for foods with small serving sizes, foods such as rye wafers would be able to bear the "healthy" term, even though they may contain as much as 880 mg of sodium per 100 g of food. The agency would consider a "healthy" claim on such a product to be misleading. Thus, to prevent misleading claims on nutrient dense foods with small serving sizes, FDA is adopting the per 50 g criterion for foods with small serving sizes, consistent with the approach used for "low" claims.

Specifically, foods that have reference amounts of 30 g or less or 2 tablespoons or less may bear the "healthy" claim provided they contain no more than 360 mg of sodium per 50 g and meet all other requirements of the definition.

Because section 403(r)(1)(A) of the act, which prohibits undefined nutrient content claims, is applicable May 8, 1994, and would preclude most "healthy" claims if that term is not defined, FDA has determined that it is essential that it provide a definition for that term by May 8, 1994. However, the agency recognizes that the revisions in the sodium requirements for individual foods and main dishes and meal products, while the logical outgrowth of the proposal, will significantly limit the amount of sodium a food may contain for it to bear a "healthy" claim as compared to the proposal. Further, results of an informal survey in Washington, DC of products currently available in the marketplace (Ref. 4) show that many individual foods, main dishes, and meal products that are labeled as "healthy," and that otherwise meet the definition of "healthy" established in this final rule, would not qualify for use of the term because the sodium level in such foods exceeds 360 mg in individual foods and 480 mg in main dish and meal products. The agency does not wish to severely disrupt the marketplace by establishing a definition or effective date for "healthy" that would cause the majority of products that are currently labeled "healthy," and that otherwise meet the definition, to be removed from the market. The agency, therefore, is providing time to give industry the opportunity to reformulate their products to meet the requirement that sodium not exceed 360 mg per reference amount and per labeled serving for individual foods and 480 mg per serving for main dish and meal products. While the effective date of the "healthy" definition is May 8, 1994, products currently on the market that otherwise meet the definition of "healthy" will not have to conform to the criteria of 360 mg sodium for individual foods and 480 mg sodium for meal-type products until January 1, 1998.

However, while the agency believes that these requirements are appropriate, it is concerned that if, during this transitional period, FDA were to permit products currently on the market that contain uncontrolled levels of sodium to continue to bear the term "healthy" until January 1, 1998, such products would not be helpful in assisting consumers in reducing their sodium intake and would be inconsistent with current dietary recommendations. Therefore, the agency is establishing a requirement that will limit the amount of sodium allowed in individual foods, main dish products and meal products bearing the term "healthy." In attempting to arrive at an appropriate level for sodium, the agency evaluated products that are currently available in the marketplace and that, with the exception of the sodium requirement, meet the definition for "healthy." The agency also considered how these products are likely to be used in constructing overall diets that conform to current dietary guidelines.

The agency determined that levels of 480 mg of sodium in individual foods and 600 mg of sodium in main dishes and meal products are appropriate levels during this transitional period. Such levels will assist consumers in reaching dietary goals by at least limiting their sodium intake, and they will not preclude products currently available and that otherwise meet the definition of "healthy" from continuing to bear the term while firms reformulate their products.

Thus, individual foods that do not exceed 480 mg sodium per reference amount and per labeled serving and meet the other requirements of the "healthy" definition provided in § 101.65(d) may bear the term until January 1, 1998. Likewise, main dishes and meal products that do not exceed 600 mg sodium per labeled serving and otherwise meet the "healthy" definition may bear the term until January 1, 1998.

3. Cholesterol

17. Some comments supported the proposal that foods that contain less than the disclosure level for cholesterol would be eligible to bear the claim. A few comments, however, urged the agency to require that a product bearing the term "healthy" meet the "low cholesterol" criteria. One comment cited the results of the survey by NCL cited in section II.D.2. of this document that showed that 79 percent of the respondents thought that a food labeled as "healthy" was low in cholesterol. Thus, the comment contended that a definition for "healthy" that does not require the food to be "low" in cholesterol is inconsistent with consumer perception.

Another comment stated that foods labeled with the term "healthy" should contain no more than 60 mg or a significantly reduced amount of cholesterol.

FDA has not been persuaded by the comments that the definition of "healthy" should include a "low" cholesterol criterion. FDA finds that a definition that requires that a food be "low" in cholesterol would be too restrictive because such a requirement would disqualify products, including some seafood and game meat containing products, that otherwise meet the "healthy" definition and that would be useful in structuring diets that conform to current dietary guidelines. Although the agency recognizes that consumers may perceive "healthy" to mean "low cholesterol" (as shown by the NCL survey) and, thus, select foods labeled "healthy" to restrict their cholesterol intake, the agency has not been convinced by the comments that a product labeled "healthy" must meet a "low cholesterol" requirement to assist consumers in achieving current dietary recommendations. Unlike sodium, cholesterol is not ubiquitous in the food supply. Dietary cholesterol is found mainly in egg yolks, certain shellfish, organ meats, and, to a lesser extent, other meats and dairy products (Ref. 5). Consequently, cholesterol is not likely to be present in significant amounts in many of the foods that are included in a healthy diet (e.g., fruits, vegetables, legumes, cereal grains).

Furthermore, while the agency acknowledges that most dietary guidance recommends that serum cholesterol be lowered because of its relationship to cardiovascular disease, saturated fat is the major dietary determinant of total serum cholesterol levels in populations (Ref. 6). The definition for "healthy" that FDA is adopting in this final rule requires that the total amount of saturated fat in a product be low for it to qualify to bear the claim. Thus, the need to restrict the amount of dietary cholesterol is diminished in the presence of the "low saturated fat" criterion. The agency finds that this criterion will adequately assist consumers in structuring a healthy diet with respect to dietary factors that could affect serum cholesterol levels. Therefore, for single ingredient products that are not raw seafood or game meat, FDA is requiring in § 101.65(d)(2)(iii) that the level of cholesterol not exceed the disclosure level.

Although it believes that the proposed criterion for cholesterol is appropriate for meal-type products as well, FDA is concerned that by adopting the proposed criterion, it would be establishing a requirement that is not totally consistent with the criterion established for cholesterol by USDA. In its final rule on the definition of "healthy," published elsewhere in this issue of the **Federal Register**, USDA is adopting a criterion that limits the amount of cholesterol in meal-type products to the disclosure level defined

in § 101.13(h)(3) permitted for main dishes, i.e., 90 mg per labeled serving. FDA examined the impact that such a requirement would have on meal products subject to its jurisdiction. (The disclosure level for meal products is 120 mg per labeled serving.) A survey of the local marketplace as well as a review of product composition data submitted to the agency (Refs. 4 and 7) has shown that meal products currently labeled "healthy" contain levels of cholesterol at or below 90 mg per labeled serving. Therefore, a requirement restricting the amount of cholesterol to 90 mg per labeled serving would not significantly affect FDA-regulated meals that currently bear the term "healthy." Further, such a requirement would ensure that the meal products labeled "healthy" are among those most likely to assist consumers in achieving dietary recommendations.

Thus, the agency does not consider it unreasonable to apply the cholesterol limitation for main dishes to its meal products as well. Accordingly, the agency is revising proposed § 101.62(d) to require that main dish and meal products that contain less than 90 mg cholesterol per labeled serving, and that otherwise meet the definition of "healthy," may bear the claim.

18. One comment suggested that, in the absence of requiring "low" for all nutrients, the agency should require a disclosure statement, as it has done for terms such as "light/lite," that states "See _____ panel for information on cholesterol and sodium," as appropriate. This statement would appear immediately adjacent to the most prominent appearance of the term on the principal display panel of the label.

In response to this comment, the agency points out that it has established requirements for label statements about nutrients that are present in amounts that exceed the disclosure levels in a product that makes a claim about another nutrient (§ 101.13(h)). In order for consumers to use such information effectively, it should be used with consistent meaning. The agency is reluctant to require use of disclosure statements on a different basis unless there is a well justified need. The comment did not provide justification for why it should, and the agency is therefore not adopting the suggestion. Thus, for "light" claims, "healthy" claims, and all other nutrient content claims, a statement in accordance with § 101.13(h) immediately adjacent to the claim is required if the food contains fat, saturated fat, cholesterol, or sodium in an amount that exceeds the disclosure level.

F. Need for Additional Criteria

In its January 6, 1993, proposal (58 FR 2944), FDA solicited comment on whether it should include additional requirements in the definition of "healthy" such as a "low calorie" criterion or a requirement that a food that bears a "healthy" claim supply a certain amount of specified essential vitamins, minerals, or other nutrients.

19. The majority of comments supported a requirement that a food must contribute certain essential nutrients to bear a "healthy" claim. They asserted that the definition of "healthy" is unbalanced without the requirement for a prescribed amount of these nutrients because a food labeled "healthy" should not only limit the amount of fat, saturated fat, cholesterol, and sodium but should also contribute certain essential nutrients. Thus, according to the comments, a claim that is to be used to assist consumers in achieving a healthy diet should include a requirement that the food provide certain essential nutrients.

The comments further asserted that the proposed definition is a one dimensional approach because it fails to adequately account for current dietary recommendations as they relate to intake of certain nutrients, such as vitamins, minerals, and other essential nutrients. The comments contended that dietary guidelines stress the importance of essential nutrients, and that foods that fail to contribute essential nutrients, but that are permitted to be labeled as "healthy," would likely mislead consumers. The comments supported their statements by submitting results from a recent poll in which 63 percent of respondents expected a product labeled "healthy" to be a good source of some important vitamins and minerals.

One comment stated that without the requirement for inclusion of some nutrients, the definition would be trivialized or compromised by its use on products of little or no nutritional value, because foods like jelly beans, soda, and certain candies could qualify to bear the term. Another comment stated that such a requirement could assist consumers in identifying foods that are nutrient dense and at the same time contain a minimum of components that according to current dietary recommendations should be limited for healthy eating.

Other comments opposed inclusion of any requirement that a product labeled with the term "healthy" provide certain nutrients in addition to limiting the amount of fat, saturated fat, sodium, and cholesterol in the product. These comments contended that the addition of a nutrient contribution requirement would limit a manufacturer's ability to formulate processed foods that have an increased nutritional quality, and such a requirement would take away an incentive to produce foods of this type.

Another comment that was opposed to a requirement that a food supply certain nutrients to qualify to bear a "healthy" claim stated that foods that are widely viewed as healthy and that contribute needed variety to a healthy diet, such as apple juice, grape juice, and whole wheat bread, would not meet this requirement and therefore would not be able to bear the "healthy" claim.

Although the agency recognizes that certain varieties of apple juice and grape juice may not be able to bear the claim, the agency disagrees that whole wheat bread will not be able to bear a "healthy" claim. Nutrient profile data analyses (Ref. 4) show that whole wheat bread will meet the 10 percent nutrient contribution requirement set forth in this final rule. The agency believes that the "healthy" claim should be reserved for those foods that are particularly helpful to consumers in achieving dietary recommendations. Conceptually, a healthy diet not only restricts nutrients that have been shown to be related to disease but also includes those nutrients that are important in sustaining body function and reducing the risk of disease. The agency would be concerned that without a requirement that a food that bears a "healthy" claim contribute at least one essential nutrient to the diet, consumers using "healthy" foods frequently might not consume enough of these nutrients. Thus, the agency agrees with those comments that stated that a product bearing the claim "healthy" should also contribute essential vitamins, minerals, or other nutrients to the diet. Accordingly, FDA is revising the definition of "healthy" to include a nutrient contribution criterion.

20. One comment suggested that the agency use the Index of Nutritional Quality (INQ) system as a mechanism to facilitate the definition of "healthy." The INQ is a ratio that compares the percent of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) of the nutrient in the food to the percent of the reference caloric intake that is contributed by the food. In other words, the INQ relates a food's contribution to nutrient allowances to its contribution to energy requirements. The comment stated that a positive nutrient contribution could be determined using this criterion. The comment proposed that a "healthy" food should have an INQ above 1 for at least four nutrients

or an INQ above 2 for at least two nutrients.

While the agency finds some merit to this comment, it believes that a less complex requirement would be more useful to consumers in understanding how to construct a total diet consistent with dietary guidelines. The use of the INQ system would also not be consistent with the approach used in defining other nutrient content claims and would likely confuse and mislead consumers regarding the nutrient profile of the food. Moreover, the RDI's of several of the essential nutrients that the comment recommended be included in the definition of "healthy" are not based on caloric density. Thus, the agency believes that it would be inappropriate to base a nutrient contribution requirement on the caloric contribution of the food. Therefore, FDA rejects the suggestion that it base a nutrient contribution requirement on the INQ system.

21. Many comments urged FDA to require that foods labeled "healthy" provide at least 10 percent of the RDI or DRV of the essential nutrients that are of sufficient public health significance to warrant their inclusion in the nutrition label. Specifically, the comments requested requirements for vitamin A, vitamin C, protein, calcium, iron, or fiber. These comments asserted that the number of these nutrients required should increase with the food's contribution to the total daily intake. Under this suggested approach, an individual food would have to contain at least 10 percent of the DV of one of the six nutrients mentioned above per reference amount and per labeled serving, a main dish would have to contain at least 10 percent of the DV of at least two of the six per serving, and a meal would have to contain at least 10 percent of the RDI or DRV of three of the six per serving.

The agency agrees with the suggestion that the required nutrients should be those that are of sufficient public health significance to warrant their inclusion in the nutrition label. Thus, the agency is revising its definition of "healthy" in § 101.65(d) to include a requirement that to bear the term, a product must provide a specified amount of vitamin A, vitamin C, protein, calcium, iron, or fiber, all of which have been highlighted by leading health authorities as being important to the public health (Refs. 2, 3, 5, and 8).

In addition, the agency believes that it is reasonable to expect main dish and meal products to contribute more than one specified nutrient to the food because the contribution of a main dish and meal product to the total daily diet is greater than that of an individual food. The approach taken by the agency in defining nutrient content claims on main dish and meal products is generally that main dishes approximate two individual foods and meals approximate three individual foods. The suggestion in the comments that main dishes provide two nutrients, and that meals provide three is consistent with this approach. Thus, the agency is revising its definition of "healthy" to include a requirement that to bear the term, a product must provide a specified amount of one, two, or three (depending on the food, i.e., individual food, main dish, or meal) of the six nutrients mentioned above.

The agency also finds merit in those comments that suggested that the definition of "healthy" include a requirement that a food bearing the claim contribute at least 10 percent of the DV of the nutrients it provides. The agency has long held that a food is not a significant source of a nutrient unless that nutrient is present in the food at a level equal to, or in excess of, 10 percent of the U.S. Recommended Daily Allowances (U.S. RDA) in a serving. In the general principles final rule (58 FR 2302 at 2414), FDA adopted regulations requiring that to bear a "good source" claim for a nutrient, the food must contain at least 10 percent of the RDI or DRV of the nutrient. Thus, FDA finds that it is appropriate to require that a food labeled "healthy" be at least a "good source" of the specified nutrients that it provides.

Therefore, FDA is providing in § 101.65(d) that for a food to bear the claim "healthy," an individual food must contain 10 percent of the RDI or DRV of one of the following per reference amount—vitamin A, vitamin C, calcium, iron, protein or fiber; a main dish must contain 10 percent of the RDI or DRV of two of the six nutrients per serving; and a meal must contain at least 10 percent of the RDI or DRV of three of the six per serving.

The agency points out that while the amount of the nutrient is the same as that required for a "good source" claim (i.e., 10 percent), the nutrient contribution provision for "healthy" for main dish and meal products does not require that the 10 percent of the RDI or DRV be contributed by a single food in the main dish or meal. (The provisions governing a "good source" claim require that a single food in the main dish or meal product contribute at least 10 percent of the RDI or DRV of the nutrient in question before the product can bear the claim.) The requirement for "healthy" would not be met, however, if the main dish or the meal contributed only a single nutrient at a level that is 20 percent or 30 percent of the RDI or DRV. The nutrient contribution requirement is met when the entire serving of the food provides at least 10 percent of the RDI or DRV of each of the number of nutrients required.

22. While many comments supported the addition of a nutrient contribution requirement in the definition of "healthy," they were divided on the question of whether products could be fortified to meet the claim. Some comments argued that fortification should not be permitted because products like jelly beans, soda, or salad dressing could qualify if fortification were permitted. Other comments argued that products that have otherwise met the definition but do not contain the essential nutrients should be permitted to be fortified.

The agency has carefully considered these comments. In the general principles proposal (56 FR 60421) and final rule (58 FR 2302), the agency considered the appropriateness of fortifying a food to meet the requirements for bearing the nutrient content claim "more." Although the agency stated its concern that random fortification could lead to deceptive and misleading claims, it concluded that fortification in accordance with the policy on fortification of foods in § 104.20 (21 CFR 104.20) would ensure that the fortification was rational, and that a "more" claim based on rational fortification would not be misleading.

The agency believes that it is reasonable to take a similar approach in the definition of "healthy." The agency is not persuaded by the comments opposing fortification that it should prohibit fortification of foods to meet the nutrient contribution requirement of the "healthy" claim. Such action would be inconsistent with the goal of encouraging manufacturers to improve the nutritional quality of foods to assist consumers in structuring a diet that conforms with current dietary recommendations. Thus, the agency is not prohibiting fortification of foods in the definition of "healthy."

However, the agency is concerned that random fortification of foods could result in deceptive or misleading "healthy" claims. Thus, consistent with the provisions governing the "more" claim, the agency believes that following the principles stated in its fortification policy as provided in § 104.20, in fortifying a food to qualify to bear the term "healthy" will ensure that those foods are not indiscriminately fortified for the sole purpose of making the claim. The fundamental objective of the fortification policy is to establish a

uniform set of principles that serve as a model for the rational addition of nutrients to foods. Accordingly, the agency is providing in § 101.65(d)(2)(v), (d)(3)(iv) and (d)(4)(v) that a food may be fortified to meet the positive nutrient requirement in the definition of "healthy," provided that the fortification is in accordance with the policy on fortification of foods in § 104.20.

Although, as fully discussed in the technical amendments document to the general principles final rule, (58 FR 44021 at 44026, August 18, 1993), the agency believes that the principles established in the fortification policy are appropriate in determining conditions for rational fortification, the agency notes that § 104.20 was developed at a time when less technology was available for food formulation, and when food consumption behaviors and recommendations varied from those considered appropriate today. Thus, FDA is concerned that limiting fortification only to the nutrients that are explicitly mentioned in § 104.20 would preclude beneficial nutrients from being used in food fortification. However, the agency does not consider it appropriate to establish a fortification policy for "healthy" that is different than the fortification policy established for "more" claims. As discussed in the technical amendments document (58 FR 44021 at 44026), the agency's intention is to initiate rulemaking to permit rational fortifications other than those described in § 101.40 to qualify for "more" claims. At the time of such rulemaking, the agency will reconsider the provisions on fortification established in this final rule.

23. One comment stated that requiring a fruit or vegetable to meet the definition of "good source" for any of the six nutrients mentioned above would eliminate cucumbers, grapes, green beans, and iceberg lettuce from bearing a "healthy" claim. The comment argued that all fruits and vegetables that meet the proposed definition for "healthy" should be allowed to use the term without having to meet any nutrient contribution requirement. The comment contended that fruits and vegetables are inherently healthy and are the only food group for which such a general statement can be made.

After considering this comment, the agency is providing one narrow exception to the requirement that foods be a good source of one of the six nutrients of public health significance to qualify to bear a "healthy" claim. Current dietary guidance emphasizes consumption of fruits and vegetables, and diets high in fruits and vegetables have been associated with various specific health benefits, including lower occurrence of coronary heart disease and some cancers (Refs. 2 and 5). Consistent with this guidance, FDA believes that increased consumption of raw fruits and vegetables can contribute significantly to a healthy diet and to achieving compliance with dietary guidelines, even if particular items, such as celery and cucumbers, do not contain 10 percent of the daily value of one of the six nutrients of public health significance. Precluding such foods from being termed "healthy" could confuse consumers and undermine an important element of current dietary guidance. FDA will therefore allow use of the term "healthy" in connection with raw fruits and vegetables that do not meet the nutrient content requirement, if the other elements of the "healthy" definition are met.

FDA is not prepared at this time to extend this exemption to processed fruits and vegetables, however. When processed, these foods are exposed to substances and conditions, such as sodium, heat, and liquid packing media, that commonly affect their nutritional profile and may alter their inherent beneficial qualities. They are also subject to a range of processing techniques, including canning, cooking, and freezing, that may have various effects. FDA does not currently have an adequate basis to evaluate these effects and thus is not prepared at this time to extend this exemption to all fruit and vegetable products. Processed fruits and vegetables will be subject to the requirement that they be a good source of one of the six nutrients of public health significance specified above. FDA welcomes information on whether to propose changes in the nutrient content requirement for fruits, vegetables, or other food categories, in order to allow the use of the term "healthy" on other foods that would not otherwise meet this aspect of the "healthy" definition that may be useful in helping achieve compliance with dietary guidelines.

24. A few comments urged the agency to include an additional criterion that a product bearing the term "healthy" must be "low" in calories. Another comment suggested that such a product meet the "low" definition for sugars. However, these comments did not offer any information that was not considered by the agency at the time it issued the "healthy" proposal.

The agency has not been persuaded by the comments that it is necessary to include a "low calorie" or "low sugar" criterion in the definition of "healthy" for the claim to be useful and not misleading to consumers. The information provided in the comments did not show that consumers expect "healthy" to be a claim about the caloric content of the food. Furthermore, the purpose of defining the term would be defeated if the term were defined so narrowly that it is appropriate only for people on weight-loss diets. Thus, the agency is not requiring that a food be "low calorie" or "low" in sugar to bear the term "healthy."

G. Treatment of Flesh Foods

25. Virtually all of the comments requested that FDA and USDA harmonize their definitions of "healthy." One comment contended that if the agencies cannot agree on a single consistent definition of the word "healthy" for any category of products, they should simply prohibit use of the term on those products. Some comments recommended that FDA adopt USDA's definition. Those comments supporting the USDA definition argued that such a definition would permit certain fish, poultry, and lean meats to bear the term "healthy," which is consistent with the current dietary recommendations of the Surgeon General and the Food and Nutrition Board (Refs. 2 and 3), which recommend consumption of fish, skinless poultry, and lean meats. The comments contended that FDA's proposed definition would permit very few, if any, fresh cut meats to bear the term. These comments urged that the two agencies coordinate their definitions so that consumers receive the assistance that they need to implement dietary recommendations.

The agency agrees with the comments that requested consistency in the FDA and USDA definitions of "healthy." Both FDA and USDA recognize that having different definitions for the same nutrient content claim could lead to consumer confusion and undermine the usefulness and credibility of the claim. FDA and USDA have jointly reached a decision to consistently define "healthy" as it applies to the foods regulated by the two agencies. Thus, elsewhere in this issue of the **Federal Register**, USDA is establishing a definition of the term "healthy" as it applies to meat and poultry products that is consistent with the relevant aspects of the definition set forth in this final rule.

In their efforts to achieve a consistent definition, USDA and FDA are adopting regulations that:

(1) Provide for the use of the term "healthy" on "extra lean" raw, single

ingredient meats, poultry, fish, and game meats,

(2) Require that all other products that bear the term be "low" in total fat and saturated fat and contain limited amounts of sodium and cholesterol, and

(3) Require that there be minimum levels of certain essential nutrients in the product. In addition, consistent with USDA's approach, FDA has, as stated above, extended the definition of "healthy" to include any of the derivatives of the term, such as "healthful" and "healthier."

The agency believes that such an approach is appropriate because establishment of a consistent definition with USDA will ensure that the term is used in a credible, consistent, useful, and nonmisleading manner. Moreover, a consistent definition will help consumers identify products in all food categories that will be helpful to them in constructing a diet that is consistent with dietary recommendations.

26. In the "healthy" proposal, as stated above, FDA solicited comment on whether the proposed definition of "healthy" would assist consumers in achieving a total diet consistent with dietary recommendations given that under the proposed definition, lean meat and seafood would not be able to bear the claim. Many comments requested that FDA revise its proposed definition so that lean meats and seafood would be able to bear the claim or, in the alternative, to establish additional criteria for those foods. The comments stated that such action was consistent with current dietary recommendations to include fish and lean meats as part of a healthy diet. The comments further stated that to not provide a definition for "healthy" that would permit seafood and game meats to bear the term would create an inequitable situation in the marketplace between comparable FDA-regulated and USDA-regulated products because access to the term would depend on whether the product is under FDA or USDA jurisdiction.

The agency agrees with the comments. As previously discussed, the agency believes that the fundamental purpose of the "healthy" claim is to highlight those foods that are particularly useful in constructing a diet that conforms to current dietary guidelines. The agency would consider it inappropriate if the requirements in the definition of "healthy" precluded use of the claim for an entire category of foods that play an important role in the diet and that dietary guidelines recommend be included in a healthy diet. Thus, FDA concludes that the definition of "healthy" should permit use of the term on those seafood and game meats that can be used to assist consumers in constructing a diet consistent with dietary recommendations but that do not meet the "low" fat and "low" saturated fat criteria. Therefore, FDA is making provision in the definition of "healthy" for certain seafood and game meat products (§ 101.65(d)(3)).

In arriving at a definition for "healthy" on seafood and game meats, the agency considered whether to limit the definition to raw, single ingredient seafood and game meats or to extend it to foods such as processed seafood and game meat products and multiple ingredient products. The agency took the latter approach in establishing definitions for the nutrient content claims "lean" and "extra lean" and provided for claims about the fat and saturated fat content of a product that could not meet the "low fat" and "low saturated fat" criteria. In the nutrient content claims final rule (58 FR 2302 at 2423), FDA adopted provisions permitting the "lean" and "extra lean" claim on nonflesh foods as well as flesh foods. (The agency notes, however, as fully discussed in the August 18, 1993, issue of the **Federal Register** (58 FR 44028) pursuant to that rulemaking, the agency has reconsidered both definitions and is now less certain than before that the definition for "lean," and possibly "extra lean," that it developed from data on flesh foods is appropriate for food products that do not contain flesh foods as ingredients. The agency will consider additional rulemaking to reexamine how the term "lean" and "extra lean" should apply to nonflesh foods.)

With respect to "healthy," however, because FDA believes that seafood and game meat products, whether individual foods, main dishes, or meals composed of more than one ingredient, can be formulated to be low in fat and low in saturated fat, it is not making special provision for formulated products. FDA finds that special provision is warranted only for raw, single ingredient seafood and game meats. The latter products do not have the advantage of being subject to reformulation to reduce the fat, saturated fat, and cholesterol levels inherently in these foods, yet they are recommended by the Surgeon General and the Food and Nutrition Board as foods to include in a healthy diet. Use of the "healthy" claim will highlight the foods in this category that are particularly useful in constructing a diet that is consistent with dietary recommendations. Finally, the agency agrees that precluding the use of "healthy" on raw, single ingredient seafood and game meats would likely confuse consumers, who would see the claim on USDA regulated products but not on comparable FDA regulated products that could be used interchangeably in a healthy diet.

Thus, the agency has concluded that providing for use of the term "healthy" on the labels of raw, single ingredient seafood and game meat products would be of value to consumers in maintaining healthy dietary practices. Accordingly, FDA is revising its definition of "healthy" so that certain raw, single ingredient seafood and game meats may bear the claim.

27. Several comments recommended that FDA use USDA's proposed definition of "healthy" (i.e., the product contains less than 10 g of fat, less than 4 g saturated fat, less than 95 mg of cholesterol, and less than 480 mg sodium per 100 g and per reference amount to define when the term may be used on seafood and game meat products. One comment suggested that the fat limitation should be 5 g per 100 g. A similar comment suggested that products meeting the "extra lean" definition should be allowed to use the term "healthy."

These comments asserted that establishing criteria in the definition of "healthy" that would permit its use on lean seafood and game meats would provide uniformity among regulations governing competitive products (i.e., comparable products that are regulated by USDA and FDA). The comments argued that such a provision would avoid unfair competition in the marketplace, as well as provide alternative choices for foods that are recommended to be included in a healthy diet.

In deciding to establish a definition for "healthy" on raw, single ingredient seafood and game meats, the agency carefully considered these comments. The agency recognizes that, because foods in this category inherently contain relatively high levels of fat, saturated fat, and cholesterol, and cannot meet the "low fat" and "low saturated fat" criteria, the definition of "healthy" for raw, single ingredient seafood and game meats will necessarily permit higher levels of fat and saturated fat in these foods than in other foods. However, the agency is not persuaded that the most appropriate approach is to adopt the definition proposed by USDA.

The agency concludes that a more appropriate approach is to adopt criteria that will permit raw, single ingredient seafood and game meat products that meet the "extra lean" definition for fat, saturated fat, and cholesterol, and otherwise meet the definition of

"healthy" that is established in this final rule for other individual foods, to bear the "healthy" claim. Such action is consistent with FDA's basic conclusion that foods labeled as "healthy" should be useful in assisting consumers in achieving a total diet consistent with dietary recommendations. Products meeting the "extra lean" criteria will better meet the goal of minimizing fat and saturated fat intake than products that meet the "lean" criteria. Accordingly, the agency is including the definition of "healthy" for raw, single ingredient seafood and game meats in § 101.65(d)(3). Under this provision, raw, single ingredient fish and game meat that contain, per reference amount and per 100 g, less than 5 g of fat, less than 2 g of saturated fat, less than 95 mg of cholesterol, and otherwise meet the requirements established in this final rule, may bear the term "healthy."

FDA recognizes that the definition of "healthy" for raw, single ingredient seafood and game meats allows the claim to be used when the level of cholesterol in the food exceeds its disclosure level (i.e., 60 mg cholesterol per reference amount and per labeled serving). The agency considered whether to prohibit the claim when the product contained more than 60 mg cholesterol. However, the agency concluded that it would be of benefit to consumers to permit the claim on raw, single ingredient seafood and game meat products that have a cholesterol content exceeding the disclosure level because the claim identifies the foods in this category that are particularly useful to consumers in structuring diets consistent with dietary guidelines. When the cholesterol level in a food labeled "healthy" exceeds FDA's disclosure level, the food is subject to the requirement in § 101.13(h) that requires a disclosure statement referring the consumer to the nutrition information panel for additional information about cholesterol content.

III. Effective Date

As discussed above, in response to comment 16, FDA is adopting May 8, 1994, as the effective date of this regulation to establish the definition of the term "healthy." Section 403(r)(1)(A) of the act, which prohibits undefined nutrient content claims, is applicable May 8, 1994. Thus, FDA has determined that it is essential that the agency provide a definition for the term "healthy" that is effective on that date. If "healthy" were not defined by May 8, 1994, products currently on the market that bear the term and that are not "grandfathered" would be misbranded and subject to regulatory action. The agency also recognizes, however, that many of the products that are marketed with a "healthy" claim do not meet all of the requirements established in this final rule, and that because of the timeframes in which this final rule is being issued, will not have sufficient time to reformulate their products.

The agency has no desire to cause the significant market disruption that would result from either not defining "healthy" or vigorous enforcement of the definition that FDA is adopting. Accordingly, the agency intends to exercise its enforcement discretion judiciously with respect to products that bear this term. Over the next 18 months, the agency is unlikely to object to products that currently bear "healthy" in their labeling, so long as their manufacturers are making good faith efforts to bring their products into compliance with § 101.65(d) and their labeling is otherwise in full compliance with the law. The agency advises, however, that it expects that new products that come onto the market during this period will fully comply with the definition of "healthy."

The agency expects that by January 1, 1996, all products that bear the term "healthy" will comply fully with § 101.65(d). The agency notes that the period between publication of this final rule and January 1, 1996, is comparable to the amount of time that manufacturers were given to comply with the requirement of the general principles final rule (58 FR 2302). The agency notes, however, that § 101.65(d)(2), (d)(3), and (d)(4) will be in effect, and that it retains the right to take action on a "healthy" claim before January 1, 1996, if it concludes that the facts of the particular case warrant such action.

With regard to the two-tier sodium requirement, before January 1, 1998, individual foods that contain more than 480 mg sodium per reference amount and per labeled serving, and main dish and meal products that contain more than 600 mg sodium per labeled serving, may not bear the "healthy" claim. After January 1, 1998, products bearing a "healthy" claim must comply with the 360 mg sodium per reference amount and per serving and 480 mg sodium per labeled serving requirement for individual foods and main dish and meal products, respectively.

IV. Economic Impact

FDA has examined the economic implications of the final rule on the definition of "healthy" as required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses. FDA finds that this final rule is not an economically significant rule as defined by Executive Order 12866. In accordance with the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant impact on a substantial number of small businesses.

A. Regulatory Options

1. No Definition

FDA could choose not to define the term "healthy." However, in the general principles final rule, FDA determined that the term "healthy" is an implied nutrient content claim. If FDA does not define the term, its use in labeling except on those products using the claim in their brand name prior to October 29, 1989 or in a nonnutritional context, would misbrand the food. This option would result in large costs, including labeling costs, and a valuable signal used by consumers to alert them to foods that may assist them in meeting dietary goals would be lost.

FDA could alternatively decide to propose to reverse its previous determination that the term "healthy" is an implied nutrient content claim. However, FDA could only make such an amendment if the agency was persuaded that its original determination was in error. FDA has received no information that would support such a conclusion. Further, such an action would require separate rulemaking and could not take effect until well after the May 8, 1994 deadline. Thus, until FDA published a final rule, this alternative would have the same impact as not defining the term "healthy."

2. Different Definition of "Healthy"

FDA could determine that an alternative definition of the term "healthy" would be appropriate. The major difference between the proposed rule and the final rule in the definition of "healthy" is in the prescribed levels of sodium. FDA originally proposed to set the allowable sodium levels at the disclosure levels for individual foods and meal-type products. However, as described earlier in this document, comments stated that the disclosure levels are too high and would result in "healthy" claims that are of little help

to consumers trying to meet dietary goals.

Alternatively, FDA could determine that "healthy" products must meet FDA's definition for "low sodium", and some comments suggested that approach. However, this option would result in significant costs because very few products now labeled as "healthy" would be able to make the claim. Also, comments indicated that the technology to reduce sodium levels to "low sodium" levels does not currently exist for many products because sodium functions as a protein binder, a preservative, and as flavoring. Such a reduction in sodium would cause most products to be unpalatable to consumers.

B. Costs of the Final Regulation

FDA believes that the costs of the final "healthy" regulation will not be substantial, as many products currently using the term already meet the definition, are very close to doing so, or can satisfactorily reformulate their product over the time period the agency is permitting for implementation of this regulation.

There are at least 35 brands that include the term "healthy" in the brand name. FDA does not know how many products or labels are sold under these brands. Nor is FDA able to estimate the number of products with labels using the term "healthy" other than in the brand name. FDA has specific information, including nutrition information, on the products of four brands. Two of these brands do not include products regulated by FDA (i.e. all of the brands' products are regulated by USDA). The remaining two brands have approximately 44 FDA regulated products sold with "healthy" in the brand name. After examining the nutritient content of these foods, FDA has determined that at least 12 products will not meet FDA's interim definition of "healthy," and that an additional 5 products will not meet the final definition of "healthy." The primary disqualifier is the sodium content of the products. In addition, a few products do not meet the "low fat" requirement.

The manufacturers of products not meeting the definition of "healthy" have three options for bringing their products into compliance: Reformulate the products to meet the definition, cease marketing the products, or relabel the product.

1. Reformulation

Whether or not a firm will choose to reformulate their products will depend on the relative cost of reformulation compared to dropping the product, and on whether the product will continue to be palatable to consumers. FDA has very little information on the cost of reformulation, which will depend on the extent of reformulation that is necessary. Of the 17 products identified as not meeting the definition of "healthy," FDA estimates that four have sodium contents so close to the defined level that these products can be easily modified. The cost of reformulating these products is expected to be small. However, the cost of reformulating several other products are expected to be higher because the current sodium or fat content significantly exceeds the defined amount, or because modifications are required in more than one nutrient (i.e. reductions in both fat and sodium content). The longer compliance period will allow firms extra time to develop the technology to reduce the sodium content of their foods and will provide consumers with time to adjust their tastes to lower sodium levels.

2. Loss of Brand Names/Products

Some manufacturers might not be able to reformulate their products or may determine that the costs of reformulation are prohibitive. The manufacturers may choose to market their products under a different brand name. New resources must also be expended in marketing the product and in informing consumers that the product has a new name. A brand name is an intangible asset representing capital just as a tangible asset is capital. Brand names act as signals that help consumers identify quality differences and shop more efficiently. Manufacturers invest real resources in developing and maintaining their brand identities. One comment to the proposal stated that one particular firm had "hundreds of millions of dollars invested in the [brand] name."

In order to calculate the value of a brand name lost to certain products, FDA compared average selling prices for 44 products sold under a "healthy" brand with prices of other non-"healthy" branded products within the same product class. The average premium earned by products with the word "healthy" in the brand name is $0.57 per 16 oz. equivalent unit (all products regardless of package size are converted to 16 oz. units). Multiplying by the average sales volume of the "healthy" brands leads to an annual cost per discontinued product of approximately $800,000.

FDA acknowledges that it could be a cost to the individual manufacturers of products currently branded "healthy" if the brand names were, in fact, removed from the market. The loss of a brand name to the extent that it does not convey false or misleading information is a societal loss, as is the loss of any productive asset. FDA is unable to calculate how much of the consumer surplus (the difference in the market price and the price consumers are willing to pay for the product) is due to consumer misinformation about the nutritional profile of products that have borne the term "healthy." Although most of these products are nutritionally labeled on the nutrition panel, some consumers use the term "healthy" as a signal to buy the product and do not read the information on the nutrition panel on the back of the product. For those individuals, existing consumer surplus would be reduced with the better information that will be provided under the consistent science-based definition, established by this final rule.

3. Relabeling

Manufacturers of those products that make "healthy" claims on products that are not sold under "healthy" brand names may choose to relabel products without the claim when reformulation is either too costly or not technologically feasible. In its regulatory impact analysis of the final rules to amend the food labeling regulations (58 FR 2927, January 6, 1993), FDA determined an average printing and redesign cost per product of $2,200 for an 18-month compliance period, the compliance period applicable to those products not meeting the interim definition of "healthy." Those products that meet the interim definition but not the final definition will have approximately 3½ years to comply. The relabeling cost applicable to the longer compliance period is significantly less per product, approaching zero, because more products will be able to incorporate mandated label changes with regularly scheduled changes. As stated previously, FDA has no information regarding the number of products that make "healthy" claims but do not use the term in the brand name. Therefore, FDA cannot determine how many products would be relabeled as a result of this regulation.

C. Benefits of the Final Regulation

In its cost-benefit for the food labeling regulations in January 1993, FDA noted many significant benefits of improved nutrition labeling—including decreased rates of cancer, coronary heart disease, obesity, hypertension, and allergic reactions to food. The agency concluded that, as consumers are given more informative labeling, uncertainty and ignorance concerning the nutritional

values of the foods they eat will decrease, and many consumers will select more nutritious, healthier foods. The improved health status of Americans expected to result from those rules was estimated to range from $4.4 billion to $26.5 billion over the next 20 years.

FDA believes that the use of the term "healthy" will contribute substantially to those benefits. "Healthy" is a powerful term for consumers who are trying to construct diets that fit within the dietary guidelines and is also important for food manufacturers who wish to market foods to those consumers interested in improving their diets. The agency believes that this definition of "healthy" will ensure that consumers wishing to meet the dietary guidelines with respect to fat, saturated fat, cholesterol, and sodium will be greatly helped in doing so, and it will provide food processors anxious to produce products that can be labeled "healthy" with established nutrient levels that they can formulate their products to achieve. As products labeled as being "healthy" in compliance with this final rule appear on the market, they will substantially contribute to the overall goal of improving the diet and health of Americans.

Thus FDA believes that the primary benefit of this definition will accrue to consumers who select these products based on a desire to meet the dietary guidelines, particularly with respect to fat, saturated fat, cholesterol, and sodium. It is possible that some products that are currently marketed as "healthy" but that do not fit the definition, and thus are not useful in achieving dietary goals, will be removed from the market, thus increasing benefits. It is also possible that a small number of products that could assist some consumers in reducing their consumption of fat, saturated fat, sodium, or cholesterol will be unable to bear the claim "healthy," thus potentially reducing benefits. Some products may be reformulated to meet the requirements for the claim but may lose sales from lack of consumer taste satisfaction. It is likely, however, given the selling power of the term "healthy," that this rule will increase the number of products bearing the term "healthy."

With a set definition for the term "healthy," firms will see the advantage of making products that can bear the "healthy" claim without the potential for either federal challenge or competition from products that are less helpful in meeting dietary goals but are also marketed as "healthy." Currently, products marketed as "healthy" have dramatically different nutritional profiles. For example, two very similar frozen entrees produced by two "healthy" brands have sodium contents per serving of 400 mg and 770 mg. Under FDA's new definition, the lower sodium product will not have to compete with higher sodium products that claim to be "healthy."

In addition, in defining the term "healthy," FDA is reducing information costs to consumers. With a set definition, consumers will be assured that the claim signals reliable information about the nutritional content of the product.

FDA is unsure of the size of the benefit derived from the specific levels of sodium required in the definition of "healthy." All consumers have some probability of a benefit from reducing sodium levels. FDA's definition of "healthy" is intended to assist in meeting dietary goals that are based on the Surgeon General's recommendation that all Americans reduce their sodium intake. The 1988 Surgeon General's Report on Nutrition and Health states:

> Although not all individuals are equally susceptible to the effects of sodium, several observations suggest that it would be prudent for most Americans to reduce sodium intake. These include the lack of a practical biological marker for individual sodium sensitivity, the benefit to persons whose blood pressures do rise with sodium intake, and the lack of harm from moderate sodium restriction.

(Ref. 2, p. 13).

D. Regulatory Flexibility

FDA is unaware of small firms marketing their products as "healthy." It is unlikely that this definition will have a significant effect on small firms.

E. Summary

FDA has examined the costs and the benefits of the final rule and has determined that it is not an economically significant rule as defined by Executive Order 12866. Although many products currently marketed as "healthy" will not meet the definition, many will require only minor reformulation. The remaining products requiring more significant modifications of nutrient content will either undergo more costly reformulation, be relabeled, or will no longer be sold. In addition FDA has determined that the benefits of the regulation derive from an incentive to food manufacturers to produce more "healthy" products and from improved information to consumers that facilitates selection of foods that help consumers meet dietary goals.

V. Environmental Impact

The agency has previously considered the environmental effects of the action being taken in this final rule. As announced in its nutrition labeling proposed rules published in the **Federal Register** of November 27, 1991 (56 FR 60366 et al.), the agency determined under 21 CFR 25.24(a)(8) and (a)(11) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Heart, Lung, and Blood Institute, NCEP, "Report of the Expert Panel on Blood Cholesterol Levels in Children and Adolescents," DHHS, Public Health Service, National Institutes of Health, April 7, 1991.

2. "The Surgeon General's Report on Nutrition and Health," DHHS, Public Health Service Publication No. 88–50210 (Government Printing Office Stock No. 017–001–00465–1), U.S. Government Printing Office, Washington DC, 1988.

3. Committee on the Nutrition Components of Food Labeling, Food and Nutrition Board, IOM, NAS, "Nutrition Labeling, Issues and Directions for the 1990's," Washington, DC, National Academy Press, 1990.

4. Satchell, F.B., Division of Programs and Enforcement Policy (HFS–158), Center for Food Safety and Applied Nutrition, memorandum to file; (a) "Nutrient Profiles of Individual Foods, Main Dishes and Meal Products that Currently Bear the Term 'Healthy,'" August 30, 1993; (b) Modification of USDA's Nutrient Data Base for Standard Reference Release 9, "Effects of Disclosure, 'Low,' and Essential Nutrient Requirements on Individual Foods," August 2, 1993.

5. Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, NAS, "Diet and Health: Implications for Reducing Chronic Disease Risk," National Academy Press, Washington DC, 1989.

6. DHHS, PHS, "Healthy People 2000: National Health Promotion and Disease Prevention Objectives," DHHS (PHS) Publication No. 91–50213, DHHS, Washington, DC, pp. 112, 113, 117, 118, 120–125, 1991.

7. Satchell, F.B., Division of Programs and Enforcement Policy (HFS–158), Center for Food Safety and Applied Nutrition, memorandum to file, "Nutritional Data of Products with 'Healthy' in the Brand Name," August 30, 1993.

8. Life Sciences Research Office, Federation of American Societies for

Experimental Biology, "Nutrition Monitoring in the United States. An Update Report on Nutrition Monitoring," chs. 3 and 4, prepared for DHHS, Government Printing Office, Washington, DC, 1989.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.65 is amended by adding new paragraphs (d)(2) through (d)(4) to read as follows:

§ 101.65 Implied nutrient content claims and related label statements.

* * * * *

(d) * * *

(2) The term "healthy" or any derivative of the term "healthy," such as "health," "healthful," "healthfully," "healthfulness," "healthier," "healthiest," "healthily," and "healthiness" may be used on the label or in labeling of a food, other than raw, single ingredient seafood or game meat products, main dish products as defined in § 101.13(m), and meal products as defined in § 101.13(l), as an implied nutrient content claim to denote foods that are useful in constructing a diet that is consistent with dietary recommendations provided that:

(i) The food meets the definition of "low" for fat and saturated fat;

(ii)(A) The food has a reference amount customarily consumed greater than 30 grams (g) or greater than 2 tablespoons and, before January 1, 1998, contains 480 milligrams (mg) sodium or less per reference amount customarily consumed, per labeled serving; or

(B) The food has a reference amount customarily consumed of 30 g or less or 2 tablespoons or less and, before January 1, 1998, contains 480 mg sodium or less per 50 g (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form);

(C)(*1*) The food has a reference amount customarily consumed greater than 30 g or greater than 2 tablespoons and, after January 1, 1998, contains 360 mg sodium or less per reference amount customarily consumed, per labeled serving; or

(*2*) The food has a reference amount customarily consumed of 30 g or less or 2 tablespoons or less and, after January 1, 1998, contains 360 mg sodium or less per 50 g (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form);

(iii) Cholesterol is not present at a level exceeding the disclosure level as described in § 101.13(h);

(iv) The food, other than a raw fruit or vegetable, contains at least 10 percent of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) per reference amount customarily consumed, per labeled serving of vitamin A, vitamin C, calcium, iron, protein, or fiber;

(v) Where compliance with paragraph (d)(2)(iv) of this section is based on a nutrient that has been added to the food, that fortification is in accordance with the policy on fortification of foods in § 104.20 of this chapter; and

(vi) The food complies with definitions and declaration requirements established in part 101 of this chapter for any specific nutrient content claim on the label or in labeling.

(3) The term "healthy" or its derivatives may be used on the label or in labeling of raw, single ingredient seafood or game meat as an implied nutrient content claim provided that:

(i) The food contains less than 5 g total fat, less than 2 g saturated fat, and less than 95 mg cholesterol per reference amount customarily consumed and per 100 g;

(ii)(A) The food has a reference amount customarily consumed greater than 30 g or greater than 2 tablespoons and, before January 1, 1998, contains 480 mg sodium or less per reference amount customarily consumed, per labeled serving; or

(B) The food has a reference amount customarily consumed of 30 g or less or 2 tablespoons or less and, before January 1, 1998, contains 480 mg sodium or less per 50 g (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form);

(C)(*1*) The food has a reference amount customarily consumed greater than 30 g or greater than 2 tablespoons and, after January 1, 1998, contains 360 mg sodium or less per reference amount customarily consumed, per labeled serving; or

(*2*) The food has a reference amount customarily consumed of 30 g or less or 2 tablespoons or less and, after January 1, 1998, contains 360 mg sodium or less per 50 g (for dehydrated foods that must be reconstituted before typical consumption with water or a diluent containing an insignificant amount as defined in § 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50 g criterion refers to the "as prepared" form);

(iii) The food contains at least 10 percent of the RDI or DRV per reference amount customarily consumed, per labeled serving of vitamin A, vitamin C, calcium, iron, protein, or fiber;

(iv) Where compliance with paragraph (d)(3)(iii) of this section is based on a nutrient that has been added to the food, that fortification is in accordance with the policy on fortification of foods in § 104.20 of this chapter; and

(v) The food complies with definitions and declaration requirements established in this part for any specific nutrient content claim on the label or in labeling.

(4) The term "healthy" or its derivatives may be used on the label or in labeling of main dish products, as defined in § 101.13(m), and meal products, as defined in § 101.13(l) as an implied nutrient content claim provided that:

(i) The food meets the definition of "low" for fat and saturated fat;

(ii)(A) Before January 1, 1998, sodium is not present at a level exceeding 600 mg per labeled serving, or

(B) After January 1, 1998, sodium is not present at a level exceeding 480 mg per labeled serving;

(iii) Cholesterol is not present at a level exceeding 90 mg per labeled serving;

(iv) The food contains at least 10 percent of the RDI or DRV per labeled serving of two (for main dish products) or three (for meal products) of the following nutrients—vitamin A, vitamin C, calcium, iron, protein, or fiber;

(v) Where compliance with paragraph (d)(4)(iv) of this section is based on a nutrient that has been added to the food, that fortification is in accordance with the policy on fortification of foods in § 104.20 of this chapter; and

(vi) The food complies with definitions and declaration requirements established in this part for any specific nutrient content claim on the label or in labeling.

Dated: April 29, 1994.

David A. Kessler,

Commissioner of Food and Drugs

Donna E. Shalala,

Secretary of Health and Human Services

[FR Doc. 94–11145 Filed 5–5–94; 10:27 am]

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federal register

Tuesday
May 10, 1994

Part IV

Department of Housing and Urban Development

Office of the Secretary
Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 582 et al.
Single Room Occupancy Program for Homeless Individuals; Final Rule
Homeless Assistance; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 582, 583, and 882

[Docket No. R-94-1722; FR-3691-I-01]

RIN 2501 AB75

Supportive Housing Program, Shelter Plus Care, and Section 8 Moderate Rehabilitation; Single Room Occupancy Program for Homeless Individuals

AGENCY: Office of the Secretary.

ACTION: Interim rule.

SUMMARY: This interim rule for the Supportive Housing Program, Shelter Plus Care, and section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals amends the programs' regulations to remove the detail in those regulations regarding the application and grant award processes and indicates that a full description of the application and grant award processes will be published in the **Federal Register** in a notice of fund availability. It also amends these regulations to clarify when Comprehensive Housing Affordability Strategy (CHAS) certifications must be made under those programs.

DATES: Effective Date: June 9, 1994. Comments due date: July 11, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Comments sent by FAX are not acceptable.

FOR FURTHER INFORMATION CONTACT: Office of Special Needs Assistance Programs; Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410; (202) 708-1234; TDD for the hearing and speech-impaired, (202) 708-2565. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and were assigned OMB control numbers 2506-0112, 2506-0118, 2506-0131.

II. Background

This interim rule makes the following revisions to the Shelter Plus Care Program, Supportive Housing Program, and section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals:

Sections 582.200 and 583.200, both entitled "notice of fund availability", are revised as described below. Sections 582.205 and 583.205, Grant award process, §§ 582.210 and 583.210, Application requirements, §§ 582.215 and 583.215, Rating criteria for applications, §§ 582.220 and 583.220, Selecting applications, and §§ 582.225 and 583.225, Obtaining additional information and awarding grants, are all deleted. In § 882.805, paragraphs (a), (b), (c), and (d) are revised. The current § 882.805(b)(2), Comprehensive housing affordability strategy (CHAS), becomes § 882.805(c). A conforming change is made in § 882.805 to paragraph (f)(10).

The revisions to sections 582.200, 583.200 and 882.805 (a) and (b), indicate that all information previously contained in these sections will now be described in detail in the notice of fund availability published in the **Federal Register** for each program funding round. The rating criteria which are required by statute are also listed in the new sections. The Shelter Plus Care statute allows additional criteria as determined appropriate by HUD, but states that these additional criteria must be listed in the interim rule. Accordingly, they are included in § 582.200. Although the non-statutory criteria that were previously listed in the Supportive Housing Program rule in § 583.215(b)(7) and (8) and in the section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals in § 882.805(b)(3)(ii)(C) to (G) are removed, these criteria are included in the notice of fund availability published elsewhere in today's **Federal Register**.

One of the selection criteria in the Shelter Plus Care statute is geographic diversity. Section 582.220(b), which is now being deleted, indicated that HUD will determine geographic diversity based on whether each of the four Census Regions contains at least three fundable applications. In practice, this definition of geographic diversity was so broad that it had little effect. Considering that the universe of applications can vary dramatically from one competition to another, the application of geographic diversity will be determined for each competition.

Two types of need are included in the Shelter Plus Care selection criteria in new § 582.200. The jurisdiction's need for homeless assistance will be calculated by HUD from generally available data to help ensure that Shelter Plus Care funds are used in areas with significant homeless needs. The need within a jurisdiction for the particular project will also be considered in the selection process.

The interim rule also amends §§ 582.120 and 583.155 on the Comprehensive Housing Affordability Strategy, or CHAS, and moves § 882.805(b)(2) on the same subject to become § 882.805(c) and amends that section. The language now makes clear that a funded jurisdiction must certify that it is following the HUD-approved CHAS by the time of grant execution, rather than by the application submission deadline, as is now implied. Also, applicants that are not states or units of general local government must only submit a certification by the jurisdiction that the application is consistent with the jurisdiction's HUD-approved CHAS.

III. Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20 (k) and (l) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and, therefore, are exempt from further environmental reviews under the National Environmental Policy Act of 1969.

Regulatory Planning and Review

This interim rule has been reviewed and approved in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the interim rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this interim rule does not have a significant economic impact on a substantial number of small entities, because this interim rule only addresses the procedures of the Department regarding the issuance of notices of funding availability.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule do not have federalism implications and, thus, are not subject to review under the Order. This interim rule addresses the procedures of the Department regarding the issuance of notices of funding availability. It will not have substantial, direct effects on States, on their political subdivisions, or on their relationships with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this interim rule will have only an indirect, though beneficial, impact on family formation, maintenance, and general well-being, since it should simplify the procedure for the development of notices of funding availability, and thus, is not subject to review under the Order.

Justification for Interim Rulemaking

Section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3545, requires the Secretary to publish in the **Federal Register** a notice of funding availability as well as a description of application procedures and the selection criteria for each program administered by the Secretary. Section 102 further specifies that the selection criteria are to be published in the **Federal Register** not less than 30 days before the application deadline. HUD has elected pursuant to this authority to publish the description of application procedures and the selection criteria in the notice of fund availability. The Department has determined that the changes made by this interim rule should be adopted without the delay occasioned by requiring prior notice and comment. These changes simply constitute a statutorily permissible change in the Department's solicitation procedures. As such, prior notice and comment are unnecessary under 24 CFR part 10.

List of Subjects

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

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

Accordingly, for the reasons stated in the preamble, parts 582, 583, and 882 of title 24 of the Code of Federal Regulations are amended as follows:

PART 582—SHELTER PLUS CARE

1. The authority citation for part 582 continues to read as follows:

Authority: 42 U.S.C. 11403 note; 42 U.S.C. 3535(d).

2. Section 582.120 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 582.120 Comprehensive housing affordability strategy (CHAS).

(a) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved complete or abbreviated CHAS pursuant to the requirements of the CHAS regulations (24 CFR part 91), and must submit a certification that the application for funding is consistent with the HUD-approved CHAS. If the applicant is a State, and the project will be located in a unit of general local government that is required to have, or has, a complete CHAS, or that is applying for Shelter Plus Care assistance under the same notice of fund availability (NOFA) and will have an abbreviated CHAS with respect to that application, the State must also submit a certification by the unit of general local government that the State's application is consistent with the unit of general local government's HUD-approved CHAS. Funded applicants must certify in a grant agreement that they are following the HUD-approved CHAS.

(b) *Applicants that are public housing agencies.* The applicant must submit a certification by the jurisdiction in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved CHAS. The certification must be made by the unit of general local government or the State, pursuant to the CHAS regulations at 24 CFR 91.1(b)(1)(ii).

* * * * *

(d) *Timing of CHAS certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved CHAS must be submitted by the funding application deadline announced in the NOFA.

3. Section 582.200 is revised to read as follows:

§ 582.200 Application and grant award.

(a) *Review.* When funds are made available for assistance, HUD will publish a notice of fund availability in the **Federal Register** in accordance with the requirements of 24 CFR part 12. Applications will be reviewed and screened in accordance with the guidelines, rating criteria and procedures published in the notice.

(b) *Rating criteria.* HUD will award funds based on the following criteria:

(1) Ability of the applicant to develop and operate the proposed assisted housing and supportive services program, taking into account the quality of any ongoing program of the applicant;

(2) Geographic diversity among the projects to be assisted;

(3) The need for a program providing housing assistance and supportive services for eligible persons in the area to be served;

(4) The quality of the proposed program for providing supportive services and housing assistance;

(5) The extent to which the proposed funding for the supportive services is or will be available;

(6) The extent to which the project would meet the needs of the homeless persons proposed to be served by the program;

(7) The extent to which the program integrates program recipients into the community served by the program;

(8) The cost-effectiveness of the proposed program;

(9) The extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable;

(10) Extent to which the project targets homeless persons living in emergency shelters, supportive housing for homeless persons, or in places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

(11) Quality of the project; and

(12) Extent to which the program will serve homeless persons who are seriously mentally ill, have chronic alcohol and/or drug abuse problems, or have AIDS and related diseases.

(Approved by the Office of Management and Budget under control number 2506–0118)

§§ 582.205, 582.210, 582.215, 582.220, and 582.225 [Removed]

4. Sections 582.205, 582.210, 582.215, 582.220, and 582.225 are removed.

PART 583—SUPPORTIVE HOUSING PROGRAM

5. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 11389; 42 U.S.C. 3535(d).

6. Section 583.155 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 583.155 Comprehensive housing affordability strategy (CHAS).

(a) *Applicants that are States or units of general local government.* The applicant must have a HUD-approved complete or abbreviated CHAS pursuant to the requirements of the CHAS regulations (24 CFR part 91), and must submit a certification that the application for funding is consistent with the HUD-approved CHAS. Funded applicants must certify in a grant agreement that they are following the HUD-approved CHAS.

(b) *Applicants that are not States or units of general local government.* The applicant must submit a certification by the jurisdiction in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved CHAS. The certification must be made by the unit of general local government or the State, pursuant to the CHAS regulations at 24 CFR 91.1(b)(1)(ii).

* * * * *

(d) *Timing of CHAS certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved CHAS must be submitted by the funding application deadline announced in the NOFA.

7. Section 583.200 is revised to read as follows:

§ 583.200 Application and grant award.

(a) *Review.* When funds are made available for assistance, HUD will publish a notice of fund availability in the **Federal Register** in accordance with the requirements of 24 CFR part 12. Applications will be reviewed and screened in accordance with the guidelines, rating criteria and procedures published in the notice.

(b) *Rating criteria.* HUD will award funds based on the following criteria:

(1) The ability of the applicant to develop and operate a project;

(2) The innovative quality of the proposal in providing a project;

(3) The need for the type of project proposed by the applicant in the area to be served;

(4) The extent to which the amount of assistance to be provided under this part will be supplemented with resources from other public and private sources;

(5) The cost effectiveness of the proposed project;

(6) The extent to which the applicant has demonstrated coordination with other Federal, state, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable; and

(7) Such other factors as the Secretary determines to be appropriate to carry out this part in an effective and efficient manner.

(Approved by the Office of Management and Budget under control number 2506–0112)

§§ 583.205, 583.210, 583.215, 583.220, and 583.225 [Removed]

8. Sections 583.205, 583.210, 583.215, 583.220, and 583.225 are removed.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

9. The authority citation for part 882 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d). In addition, subpart H is issued under the authority of 42 U.S.C. 11401.

10. Section 882.805 is amended by revising paragraphs (a), (b), (c), (d), and (f)(10) to read as follows:

§ 882.805 Application and grant award.

(a) *Review.* When funds are made available for assistance, HUD will publish a notice of fund availability in the **Federal Register** in accordance with the requirements of 24 CFR part 12. Applications will be reviewed and screened in accordance with the guidelines, rating criteria and procedures published in the notice.

(b) *Rating criteria.* HUD will award funds based on the following criteria:

(1) Ability of the applicant to develop and operate a project;

(2) Need for assistance; and

(3) Other criteria as determined appropriate by the Secretary.

(c) *Comprehensive housing affordability strategy (CHAS)—*

(1) *Certifications of consistency.* Except as provided in paragraph (c)(2) of this section, the applicant must submit a certification by the jurisdiction in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved CHAS. The certification must be made by the unit of general local government or the State, pursuant to the CHAS regulations at 24 CFR 91.1(b)(1)(ii).

(2) *Exception.* The CHAS certification is not required where the proposed project will be located on a reservation of an Indian tribe or the Insular Area of Guam, the U.S. Virgin Islands, American Samoa or the Northern Mariana Islands.

(3) *Timing of CHAS certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved CHAS must be submitted by the funding application submission deadline announced in the NOFA.

(d) *Receipt of information for environmental review.* Information must be submitted to allow completion of environmental reviews required under 24 CFR Part 50. HUD may eliminate an application from consideration where the application would require an Environmental Impact Statement.

* * * * *

(f) * * *

(10) In the event that the PHA determines that any structure proposed in its application is infeasible, or the PHA proposes to select a different structure for any other reason, the PHA must submit information for the proposed alternative structure to HUD for review and approval. HUD will rate the proposed structure in accordance with procedures in the applicable notice of fund availability. The PHA may not proceed with processing for the proposed structure or execute an Agreement until HUD notifies the PHA that HUD has approved the proposed alternative structure and that all requirements have been met.

* * * * *

Dated: May 5, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–11213 Filed 5–5–94; 4:16 pm]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-94-3750; FR-3700-N-01]

Notice of Funding Availability for Homeless Assistance

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This Notice announces the availability of approximately $545 million for applications for assistance designed to help communities move toward continuum of care systems to assist homeless persons. These funds are available under three programs to fill gaps within the context of developing seamless systems for combating homelessness. The three programs are: (1) Supportive Housing; (2) Shelter Plus Care; and (3) Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals. Funds will be awarded competitively. This notice of funding availability (NOFA) contains information concerning the continuum of care approach, eligible applicants, eligible activities, application requirements, and application processing.

DATES: An original completed application for the applicable program must be received by 6 p.m. Eastern Time on the applicable date shown in the chart below, following **ADDRESSES.** The application must be received in the Office of Special Needs Assistance Programs in Washington. Applications may not be sent by facsimile (FAX). These deadlines are firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the applicable deadline.

ADDRESSES: For a copy of application packages contact: Please contact a HUD Field Office listed in the appendix to this NOFA.

An original completed application must be submitted to the following address: Department of Housing and Urban Development, Office of Special Needs Assistance Programs, 451 Seventh Street, SW., room 7262, Washington, DC 20410, Attention: Homeless Assistance Funding. Two copies of the application, as indicated in the chart below, must also be sent to the HUD Field Office serving the area in which the applicant's project is located. A list of Field Offices appears in the appendix to this NOFA. Field Office copies must be received by the application deadline as well, but a determination that an application was received on time will be made solely on receipt of the application at the Office of Special Needs Assistance Programs in Washington.

SCHEDULE OF COMPETITIONS FOR FISCAL YEAR 1994

Element	Shelter plus care	Section 8 SRO	Supportive housing
Approximate funding for FY 1994	$115 million	$140 million	$290 million.
Applications due to HUD headquarters in Washington.	July 5, 1994, 6:00 pm eastern time.	July 5, 1994, 6:00 pm eastern time.	August 5, 1994, 6:00 pm eastern time.
Applications to be sent to	Original copy to headquarters in Washington, two copies to local field office.	Original copy to headquarters in Washington, two copies to local field office.	Original copy to headquarters in Washington, two copies to local field office.

FOR FURTHER INFORMATION CONTACT: Please contact the HUD Field Office for the area in which the proposed project is located for additional information. Telephone numbers are included in the list of Field Offices set forth in the appendix to this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and assigned OMB approval numbers 2506-0131, 2506-0112, and 2506-0118.

I. Substantive Description

(a) Authority

The Supportive Housing program is authorized by title IV, subtitle C, of the Stewart B. McKinney Homeless Assistance Act (McKinney Act), as amended, 42 U.S.C. 11381. Regulations for this program are contained in 24 CFR part 583, as amended by an interim rule published elsewhere in today's **Federal Register.** Funds made available under this NOFA for the Supportive Housing program are subject to the requirements of the amended regulations.

The Shelter Plus Care program is authorized by title IV, subtitle F, of the McKinney Act, as amended, 42 U.S.C. 11403. Regulations for this program are contained in 24 CFR part 582, as amended by an interim rule published elsewhere in today's **Federal Register.** Funds made available under this NOFA for the Shelter Plus Care program are subject to the requirements of the amended regulations.

The Section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals is authorized by section 441 of the McKinney Act, as amended, 42 U.S.C. 11401. Regulations for this program are contained in 24 CFR part 882, subpart H, as amended by an interim rule published elsewhere in today's **Federal Register.** Funds made available under this NOFA for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals are subject to the requirements of the amended regulations.

(b) Funding Availability

Approximately $545 million is available under this NOFA. This amount consists of $290 million appropriated for the Supportive Housing program, $115 million appropriated for the Shelter Plus Care program, and $140 million appropriated for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals. All of these funds were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (approved October 28, 1993, Public Law 103-124) (94 App. Act). Any unobligated funds from previous competitions or additional funds that may become available as a result of deobligations or recaptures from previous awards may also be used to fund applications for the same program submitted in response to this NOFA.

HUD reserves the right to fund less than the full amount requested in any application.

(c) Purpose

The purpose of this NOFA is to fund projects and activities which will fill gaps within the context of moving toward seamless continuum of care systems to assist homeless persons and prevent homelessness. A continuum of care system consists of three fundamental components:

(1) First, there must be an outreach/emergency shelter/assessment effort which provides immediate shelter and can identify an individual's or family's needs.

(2) The second component offers transitional housing and necessary social services. Such services include substance abuse treatment, short-term mental health services, independent living skills, day care, job training, etc. for those who need them to transition from homelessness to the highest level of independent living that the individual or family is capable of achieving.

(3) The third and final component, and one which every homeless individual and family needs, is permanent housing or permanent supportive housing arrangements.

While not all homeless individuals and families in a community will need to access all three components, unless all three components are coordinated within a community, none will be successful. A strong homeless prevention strategy is also key to the success of the continuum of care.

(d) Background

The Department recognizes that the separate appropriations and differing statutory requirements of the three programs covered by this NOFA are barriers to creating continuum of care systems that are truly responsive to community needs. The Department is pursuing legislative changes necessary to provide localities and providers with the flexibility they need to create comprehensive systems that completely address the many dimensions of the problem in a coordinated fashion. And, under this NOFA, the Department will move in that direction by using its funding resources to help increase the level of coordination among nonprofit organizations, government agencies and other entities that is necessary to develop systematic approaches for successfully addressing homelessness.

To further the purpose of this NOFA, heavy emphasis is placed upon coordination in the application selection criteria. In preparing its application, the applicant should, to the extent possible, coordinate its efforts with other providers of services and housing to homeless persons, such as nonprofit organizations, government agencies, and housing developers, and consult with homeless or formerly homeless persons. At a minimum, applicants need to be familiar with currently available services and housing for homeless families and individuals in their communities, including services and housing available under mainstream programs such as those providing mental health services and substance abuse treatment. This knowledge will allow the applicant to identify the gaps in currently available services and housing, and develop its application to fill one or more of the gaps.

Ideally, this process should involve organizations working together to: create, maintain and build upon a community-wide inventory of current services and housing for homeless families and individuals; identify the full spectrum of needs of homeless families and individuals; and coordinate efforts to obtain resources to fill gaps between the current inventory and needs.

(e) Use of NOFA Funds and Matching Funds To Fill Gaps

Funds available under this NOFA and matching funds may be used in the following ways to fill gaps within the context of moving toward continuum of care systems:

(1) *Emergency Shelter/Assessment.* The Supportive Housing program may provide funding for outreach to homeless persons and assessment of their needs. The Shelter Plus Care program requires a supportive services match; outreach and assessment activities count toward that match. The SRO program applicants receive rating points for the extent to which supportive services, including outreach and assessment, are provided.

(2) *Transitional housing and necessary social services.* The Supportive Housing program may be used to provide transitional housing with services, including both facility-based transitional housing and scattered-site transitional services. The Supportive Housing program may also be used to provide a safe haven, as described in section I.(g) of this NOFA.

(3) *Permanent housing or permanent supportive housing.* The Supportive Housing program may be used to provide permanent supportive housing *for persons with disabilities*, including both facility-based and scattered-site permanent supportive housing. The Shelter Plus Care program may be used to provide permanent supportive housing *for persons with disabilities* in a variety of housing rental situations. This program requires a supportive services match; all supportive service activities count toward that match. The SRO program provides permanent housing for homeless individuals with incomes that do not exceed the low-income standard of the Section 8 housing program. The SRO program applicants receive rating points for the extent to which supportive services are provided. Providing permanent housing for homeless families is not available under the SRO program or the SRO component of the Shelter Plus Care (S+C) program because an SRO unit is designed for a single individual. Permanent housing for homeless families is only eligible under the other components of the S+C program and under the Supportive Housing program if an adult member has a disability.

(4) *Homeless prevention.* The Supportive Housing program under the Rural Homelessness Initiative component may be for homeless prevention activities in rural areas, as described in section I.(g) of this NOFA.

(f) Program Summaries

The chart below summarizes key aspects of the Supportive Housing Program, the Shelter Plus Care Program, and the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals. Descriptions are contained in the applicable program regulations. Descriptions of Rural Homelessness Initiative projects and Safe Havens projects, which may be carried out under the Supportive Housing program, are included in section I.(g) of this NOFA.

Element	Supportive housing	Shelter plus care	Section 8 SRO
Authorizing legislation	Subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act, as amended.	Subtitle F of title IV of the Stewart B. McKinney Homeless Assistance Act, as amended.	Section 441 of the Stewart B. McKinney Homeless Assistance Act, as amended.

Element	Supportive housing	Shelter plus care	Section 8 SRO
Implementing regulations	24 CFR part 583, as amended May 10, 1994.	24 CFR part 582, as amended May 10, 1994.	24 CFR part 882, subpart H, as amended May 10, 1994.
Eligible applicant(s)	• States • Units of general local government. • Public housing agencies (PHAs) • Tribes • Private nonprofit organizations • CMHCs that are public nonprofit organizations.	• States • Units of general local government. • Tribes • PHAs	• PHAs. • Private nonprofit organizations.
Components	• Transitional housing • Permanent housing for disabled persons. • Innovative supportive housing • Supportive services not in conjunction with supportive housing. • Rural Homelessness Initiatives • Safe Havens	• Tenant-based • Sponsor-based • Project-based • SRO-based	• SRO housing.
Eligible activities*	• Acquisition • Rehabilitation • New construction • Leasing • Operating costs • Supportive services	• Rental assistance	• Rental assistance.
Eligible populations*	• Homeless persons	• Homeless disabled individuals • Homeless disabled individuals and their families.	• Homeless individuals. • Section 8 eligible current occupants.
Populations given special consideration.	• Homeless persons with disabilities. • Homeless families with children	• Homeless persons who: • are seriously mentally ill • have chronic problems with alcohol and/or drugs. • have AIDS and related diseases.	N/A.
Initial term of assistance	3 years	5 years: TRA, SRA, and PRA if no rehab 10 years: SRO and PRA if rehab.	10 years.

*Additional activities and persons are eligible under the Rural Homeless Initiatives projects, as described in section I.(g) below.

(g) Program Allocations

(1) *Supportive Housing Program Allocations.* A total of $334 million was appropriated for Fiscal Year 1994 for the Supportive Housing Program. However, approximately $44 million is expected to be awarded to those current grantees who have been notified that they qualify for renewal grants in 1994. The balance of approximately $290 million is available for competitive grants under this NOFA, and the Department expects to award SHP grants generally ranging in size up to $2,000,000, with the average grant amount for supportive services being approximately $1,000,000. Rural homelessness initiative projects, safe havens, and minimum percentage allocations for SHP funds are described below.

Rural homelessness initiative projects. In accordance with the 94 App. Act, $20 million of the Supportive Housing Program appropriation is available for rural homelessness initiative projects. Applications for grants for such projects will compete against each other rather than against all other SHP applications. If there is an insufficient number of approvable applications for this rural initiatives competition, the unused balance will be added to the amount available for other SHP grants.

Eligible applicants under the Supportive Housing Program may carry out rural homelessness initiative projects in non-urbanized areas. Such areas include all counties located outside of Metropolitan Statistical Areas (MSAs) and nonurbanized areas inside of MSAs. Applicants will be required to provide evidence in their applications that the area to be served is non-urbanized.

A rural homelessness initiative project may include any activity that is eligible under the Supportive Housing Program. In addition, such projects may include homeless prevention activities and capacity building activities, as prescribed by the 94 App. Act, which cross-references the eligible activities described in subtitle G of the McKinney Act. Accordingly, the following homeless prevention activities may be carried out in rural areas as part of a rural homelessness initiative project:

—Rent, mortgage, or utility assistance after 2 months of nonpayment in order to prevent eviction, foreclosure, or loss of utility service;

—Security deposits, rent for the first month of residence at a new location, and relocation assistance;

—Short-term emergency lodging in motels or shelters, either directly or through vouchers;

—Rehabilitation and repairs to prevent homelessness, such as insulation, window repair, door repair, roof repair, and repairs that are necessary to make premises habitable;

—Development of comprehensive and coordinated support services to prevent homelessness that use and supplement, as needed, community networks of services, including outreach services to reach eligible individuals and families; case management; housing counseling; budgeting; job training and placement; primary health care; mental health services; substance abuse treatment; child care; transportation; emergency food and clothing; family violence services; education services; moving services; entitlement assistance; and referrals to veterans services and legal services.

Activities designed to build the capacity of organizations to address homelessness in the community,

including payment of operating costs and staff, may also be carried out as part of a rural homelessness initiative project, provided that no more than 20 percent of the amount awarded for any rural homelessness initiative project may be used for such capacity building activities.

All rules applicable to the Supportive Housing Program, as described at 24 CFR part 583, apply to rural homelessness initiative projects, except the eligible activity provisions in subpart B of part 583 are expanded for these projects to include the listed homeless prevention activities and capacity building activities.

Applicants for rural projects proposing to carry out homeless prevention activities or capacity building activities must apply under the category of rural homelessness initiative projects. In total, no more than $20 million will be awarded for such projects. Applicants for rural projects proposing only activities that are normally eligible under the Supportive Housing Program may either apply for assistance under the $20 million rural homelessness initiatives category or compete with all other SHP applicants for the balance of the available SHP funds (approximately $270 million).

Safe havens. In accordance with the 94 App. Act, up to $50 million of the Supportive Housing Program appropriation is available for safe havens projects. Although safe havens projects would have been eligible in the past for Supportive Housing Program grants, these projects would not have been competitive under the "Quality of Project Plan" rating criteria. It has become clear that safe havens can play an important role in a continuum of care system, particularly with respect to the hard-to-serve homeless population. To ensure that safe havens projects are competitive this year, application selection criteria have been modified to reflect the special characteristics of safe havens.

Safe havens, as that term is used in this NOFA, is a form of supportive housing designed specifically to provide a safe residence for homeless persons with serious mental illness who are currently residing primarily in public or private places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, and who have been unwilling or unable to participate in mental health or substance abuse treatment programs or to receive other supportive services.

For many persons with mental illness who have been living on the street, the transition to permanent housing is best made in stages, starting with a small, highly supportive environment where an individual can feel at ease, out of danger, and subject to relatively few immediate service demands. Traditional supportive housing settings often assume a readiness by the clientele to accept a degree of structure and service participation that would overwhelm and defeat a person with mental illness who has come fresh from the street.

Safe havens are designed to provide persons with serious mental illness who have been living on the streets with a secure, non-threatening, non-institutional, supportive environment. These facilities can serve as a "portal of entry" to the service system and provide access to basic services such as food, clothing, bathing facilities, telephones, storage space, and a mailing address.

Safe havens do not require participation in services and referrals as a condition of occupancy. Rather, it is hoped that after a period of stabilization in a safe haven, residents will be more willing to participate in services and referrals, and will eventually be ready to move to a more traditional form of housing.

Specifically, the term "safe haven" means a structure or a clearly identifiable portion of a structure: (1) That proposes to serve hard-to-reach homeless persons with severe mental illness; (2) that provides 24-hour residence for eligible persons who may reside for an unspecified duration; (3) that provides private or semi-private accommodations; (4) that may provide for the common use of kitchen facilities, dining rooms, and bathrooms; and, (5) in which overnight occupancy is limited to no more than 25 persons. A "safe haven" may also provide supportive services to eligible persons who are not residents on a drop-in basis. To be considered for funding under the Safe Havens component of the Supportive Housing Program, a proposed project must be consistent with the five features listed above.

All rules applicable to the Supportive Housing Program, as described at 24 CFR part 583, apply to safe havens.

Minimum percentages. In accordance with section 429 of the McKinney Act, as amended, HUD will allocate not less than 25 percent of the total available funds to projects that primarily serve homeless families with children, not less than 25 percent to projects that primarily serve homeless persons with disabilities and not less than 10 percent for supportive services not provided in conjunction with supportive housing. After applications are rated and ranked, based on the criteria described below, HUD will determine if the conditionally selected projects achieve these minimum percentages. If not, HUD will skip higher-ranked applications in a category for which the minimum percent has been achieved in order to achieve the minimum percent for another category. If there is an insufficient number of conditionally selected applications in a category to achieve its minimum percent, the unused balance will be used for the next highest-ranked approvable application in the competition.

(2) *Shelter Plus Care Program Allocations.* Approximately $115 million is available for assistance under the Shelter Plus Care program. In accordance with section 463(a) of the McKinney Act, as amended by the 1992 Act, HUD will allocate at least 10 percent of the available funds for each of the four components of the program: Tenant-based Rental Assistance; Sponsor-based Rental Assistance; Project-based Rental Assistance; and Section 8 Moderate Rehabilitation of Single Room Occupancy Dwellings for Homeless Individuals.

After applications are rated and ranked, based on the criteria described below, HUD will determine if the conditionally selected projects achieve these minimum percentages. If necessary, HUD will skip higher-ranked applications for a component for which the minimum percent has been achieved in order to achieve the minimum percent for another component. If there is an insufficient number of approvable applications in a component to achieve its minimum percent, the unused balance will be used for the next highest-ranked approvable application in the competition.

No Shelter Plus Care application may be approved for more than $3 million. Any applicant that is a unit of general local government, a local public housing authority, or an Indian tribe may submit only one Shelter Plus Care application. Any applicant that is a State or a State public housing authority may submit applications for more than one jurisdiction but must submit a separate application for each and may only submit one application for each jurisdiction.

With regard to the Shelter Plus Care/Section 8 SRO component, applicant States, units of general local government and Indian tribes must subcontract with a Public Housing Authority to administer the Shelter Plus Care assistance. Also with regard to this component, no single project may contain more than 100 units.

(3) *Allocations for Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals.* Approximately $140

million is available for assistance under the Section 8 SRO program. HUD estimates that this $140 million will assist approximately 4,000 units over the 10-year funding period. Applicants need to be aware of the following limitations on the allocation of Section 8 SRO funds:

- A separate application must be submitted for each site for which assistance is requested and, under section 8(e)(2) of the United States Housing Act of 1937, no single project may contain more than 100 units;
- Under section 441(c) of the McKinney Act, no city or urban county may have projects receiving a total of more than 10 percent of the assistance to be provided under this program;
- Applicants that are private nonprofit organizations must subcontract with a Public Housing Authority to administer the SRO assistance; and
- Under section 441(e) of the McKinney Act and 24 CFR 882.805(g)(1), HUD publishes the SRO per unit rehabilitation cost limit each year to take into account changes in construction costs. For purposes of Fiscal Year 1994 funding, the cost limitation is raised from $15,700 to $15,900 per unit to take into account increases in construction costs during the past 12-month period.

II. Application Requirements

An application for Supportive Housing, Shelter Plus Care, or Section 8 SRO assistance consists of narrative, numerical, and financial information. The application requires a description of: The need for assistance; coordination by the applicant in planning the proposed project, including how the proposed project will help the community move toward a continuum of care system by filling a gap in the community's response to homelessness; the proposed project, including the plan for housing and services to be provided to participants; resources expected for the project and the amount of assistance requested; the experience of all organizations who will be involved in the project; and the sources and number of proposed participants. An application also contains certifications that the applicant will comply with fair housing and civil rights requirements, program regulations, and other Federal requirements, and (in most cases) that the proposed activities are consistent with the HUD-approved Comprehensive Housing Affordability Strategy of the applicable State or unit of general local government.

The specific application requirements will be specified in the application package for each program. This package includes all required forms and certifications, and may be obtained from a HUD Field Office listed in the appendix to this NOFA.

Care should be taken in the selection of projects and in the preparation of applications to ensure that environmental and historic preservation impediments do not cause an application to be denied or approval severely delayed. In general, any application HUD receives from a state or local government will require that the environmental assessment be prepared by the local or state government before the grant application can be approved. The environmental assessments for non-governmental applicants will be conducted by HUD. Questions about which environmental and historic preservation laws may apply should be addressed to the HUD Field Office.

III. Application Selection Process

The Department will use the following review, rating, and conditional selection process for each of the four competitions (S+C, SRO, SHP, and SHP Rural Initiative) to be conducted under this NOFA:

(a) *Review.*

Applications will be reviewed to ensure that they meet the following requirements:

(1) *Applicant eligibility.* The applicant and project sponsor, if relevant, must be eligible to apply for the specific program.

(2) *Eligible population to be served.* The population to be served must meet the eligibility requirements of the specific program.

(3) *Eligible activities.* The activities for which assistance is requested must be eligible under the specific program.

(4) *Fair housing and equal opportunity.* Organizations that receive assistance through the application must be in compliance with applicable civil rights laws and Executive Orders.

(5) *Vacancy rate.* For the Section 8 SRO program, at least 25 percent of the units to be assisted at any one site must be vacant at the time of application.

(b) *Rating and Conditional Selection.*

Applications for each competition (S+C, SRO, SHP, SHP Rural Initiative) will be rated in two steps based on the criteria listed below, with a maximum of 75 points awarded at the first step and a maximum of 50 points awarded at the second step. To rate applications, the Department may establish a panel including persons not currently employed by HUD to obtain outside points of view, including views from other Federal agencies.

After points have been awarded during the first step, applications will be ranked from highest point score to lowest. A line will then be drawn at that point in the ranking at which program funds would be exhausted plus an additional percentage. Applications above the line will then move to the second step of the selection process, except that HUD reserves the right to include other applications in the second step review if necessary to help achieve geographic diversity or to meet the minimum percentages required by statute.

After points have been awarded during the second step, the points from each step will be added together. A bonus of 5 points will be added in determining the final score of any SHP applicant that agrees to enter into a partnership agreement with a potential AmeriCorps program sponsor, as described in section V of this NOFA. Using the final scores, the applications will again be placed in rank order. Whether an application is conditionally selected will depend on its overall ranking compared to other applications, except that HUD reserves the right to select lower rated applications if necessary to achieve geographic diversity or to meet the minimum percentages required by statute.

For all programs, in the event of a tie between applicants, the applicant with the highest total points for the coordination criterion will be selected. In the event of a procedural error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round under this NOFA, HUD may select that applicant when sufficient funds become available.

For Shelter Plus Care and Supportive Housing, in cases where the applicant requests assistance for more than one of the components of the program within one application, the components will not be rated separately. Rather, the application will be rated as a whole. (For Section 8 SRO, only one project is allowed per application.)

(c) *Core Selection Criteria.*

The following five core selection criteria apply to each of the programs covered by this NOFA and account for 65 of the 75 points available for award at the first step of the process.

(1) *Need.* HUD will award up to *20 points* based on the jurisdiction's need for homeless assistance. HUD will calculate need from generally available data.

(2) *Capacity.* HUD will award up to *15 points* based on extent to which all the organizations involved in the project demonstrate:

• Timeliness in the speed with which the project will become operational, taking into account differences in the types of projects proposed for funding.

• Experience in carrying out similar activities to those proposed either as an ongoing provider of housing and/or services to homeless people, or as an ongoing provider of housing and/or services who is in some way tangibly connected to an ongoing homeless delivery system.

• As applicable, the rating under this criterion will also consider prior performance with any HUD McKinney Act grants or other HUD-administered programs, including any serious, outstanding audit or monitoring findings that directly affect the proposed project.

(3) *Quality of project.* HUD will award up to *15 points* based on the extent to which the applicant demonstrates:

• Homeless individuals and/or families will obtain and/or remain in permanent housing.

• Homeless individuals and/or families will increase skills and/or income.

• Homeless individuals and/or families will achieve greater self-determination including being involved in project decision-making and operation.

• The appropriateness of the proposed housing and supportive services given the needs of the population proposed to be served.

• For the permanent housing projects, integration of homeless individuals and/or families into the surrounding community.

• For transitional housing projects, how persons completing a transitional housing program will be assisted in locating and remaining in permanent affordable housing and how the applicant will assure that necessary follow-up services will be provided to such persons.

• For projects serving families, the project serves the family together, and works to strengthen the family structure. Projects that mix families with singles populations in the same structure will be viewed unfavorably.

• For Safe Haven projects, in place of the above factors, up to *15 points* will be awarded based on the extent to which the applicant demonstrates how the project will link persons to other housing and supportive services after stabilization in a safe haven, the availability of basic services in the safe haven, and how the security of participants will be assured by the applicant.

(4) *Targeting.* HUD will award up to *10 points* based on the percentage of persons to be served by the project who are sleeping in emergency shelters (including hotels or motels used as shelter for homeless families), other facilities for homeless persons, or places not meant for human habitation, such as cars, parks, sidewalks, or abandoned buildings. This includes persons who ordinarily live in such places but are in a hospital or other institution on a short-term basis (short-term is considered to be 30 consecutive days or less). The applicant's description of its strategy for reaching these populations will be a factor in rating this criterion.

(5) *Leveraging.* HUD will award up to *5 points* based on the extent to which the amount of assistance to be provided under this grant is supplemented with properly documented cash or in-kind resources from public and private sources that will be used for the project. For S+C and SRO applications, leveraging will be based on properly documented resources for supportive services. For SHP applications, leveraging will be based on properly documented resources for any project activity.

(d) *Supportive Housing additional selection criteria.*

The following two selection criteria account for the remaining 10 points available for award at the first step of selection process for SHP grants.

(1) *Cost effectiveness.* HUD will award up to *5 points* based on the extent to which supportive services are provided from resources other than the Supportive Housing Program grant.

(2) *Innovation.* HUD will award up to *5 points* if the proposed project represents an innovative approach when viewed nationally, and that promises to be successful and replicable. Applications submitted under the "innovative supportive housing" component of the Supportive Housing Program must achieve points under this "Innovation" criterion.

(e) *Shelter Plus Care additional selection criterion.*

The following selection criterion accounts for the remaining *10 points* available for award at the first step of the selection process for S+C grants.

(1) *Serving targeted disabilities.* Within the eligible population to be served, HUD will award up to *10 points* based on the number of individuals to be served who experience serious mental illness, have chronic alcohol and/or drug abuse problems, or have AIDS and related diseases in relation to the total number of people proposed to be served. In awarding these points, HUD will also consider the availability of case management in determining the likely effectiveness of the expenditures for housing and services to be provided to the targeted population.

(f) *Section 8 SRO additional selection criterion.*

The following selection criterion accounts for the remaining *10 points* available for award at the first step of the selection process for Section 8 SRO grants.

(1) *Availability of vacant units.* HUD will award up to *10 points* based on the percentage of units (beyond the required 25 percent) proposed for assistance which are vacant at the time of application.

(g) *Final selection criterion: Coordination and Planning.*

For each application that reaches the second step of the selection process, up to *50 points* will be awarded based on the extent to which the application demonstrates:

• Need for the type of project proposed in the area to be served, and that the proposed project will be coordinated with other service and housing providers in the community, and will effectively and appropriately fill a gap in the community's response to homelessness.

• Participation in a community process which is moving toward a continuum of care strategy, which could include nonprofit organizations, State and local governmental agencies, other homeless providers, housing developers and service providers, private foundations, local businesses and the investment banking community, neighborhood groups, and homeless or formerly homeless persons.

• Coordination with other applicants, if any, applying for assistance under this NOFA for projects in the same local jurisdiction. (If more than one organization within a local jurisdiction is submitting an application under this NOFA, the same description of the coordination process may be submitted by these organizations. HUD is encouraging coordination and expects such collaboration among providers.)

• Quality of planning, including how the project uses or will use mainstream services, such as income supports, mental health services, and substance abuse treatment, and how the project uses or will use mainstream housing programs, such as Section 8 rental assistance, HOME, and State programs, and other permanent housing resources to complete the continuum of care. The scale of the project will also be considered, with plans to concentrate large numbers of homeless persons at one location viewed unfavorably.

(h) *Clarification of application information.*

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in the application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

(i) *Technical Assistance.*

Prior to the application deadline, HUD field office staff will be available to provide advice and guidance to potential applicants on application requirements and program policies. Following conditional selection, HUD field office staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of a grant agreement by HUD. However, between the application deadline and the announcement of conditional selections, HUD will accept no information that would improve the substantive quality of the application pertinent to the funding decision.

IV. Grant Award Process

HUD will notify conditionally selected applicants in writing. As necessary, HUD will subsequently request them to submit additional project information, which may include documentation to show the project is feasible; documentation of firm commitments for cash match; documentation showing site control; information necessary for HUD to perform an environmental review, where applicable; and such other documentation as specified by HUD in writing to the applicant, that confirms or clarifies information provided in the application. Applicants will also be notified of the date of the two month deadline for submission of such information. If an applicant is unable to meet any conditions for grant award within the specified timeframe, HUD reserves the right not to award funds and to use the funds available in the next competition for the applicable program.

V. Linking Supportive Housing Programs and AmeriCorps

On September 21, 1993, President Clinton signed national service legislation into law, creating the Corporation for National and Community Service. Through the new Corporation, Americans of all ages and backgrounds will work to meet urgent challenges in their communities in the areas of education, public safety, human needs and the environment. Helping people who are homeless is a key objective under the Corporation's human needs priority.

AmeriCorps's Fiscal Year 1994 budget will support up to 20,000 full-time equivalent positions for service participants. Full-time service participants (those working 1700 hours over a 9 to 12 month period) are eligible to receive approximately $7600 as a living allowance and a post-service award of $4725 to be used for past or present educational expenses. AmeriCorps will be able to support a greater number of service participants if other organizations can pay the living allowances and related costs, with AmeriCorps providing the post-service educational awards.

Accordingly, $3,400,000 of Supportive Housing Program funds is being set-aside under the 1994 SHP competition as a special fund to pay costs incurred by SHP grantees to procure the services of AmeriCorps service participants for SHP projects, where SHP grantees enter into partnerships with local AmeriCorps program sponsors. The local AmeriCorps program sponsor will be responsible for recruiting, selecting, and training the service participants, who will then join the staff of the SHP project.

After a partnership agreement with the local AmeriCorps program sponsor is executed, bonus SHP funds from the $3,400,000 set-aside would be added to the regular SHP grant. The bonus may include payment for living allowances or stipends, benefit packages and the reasonable overhead costs of the AmeriCorp program sponsor, but may not exceed the cost which would be paid by the SHP grantee for the same services when procured from a contractor. Also, if the service participants are employed in operating the project, the SHP AmeriCorps bonus is subject to the SHP requirement that operating costs be shared. Examples of employment often covered in the operating budget include maintenance, security, and facility management. Supportive services are not subject to local cost-sharing, so if service participants are employed in delivering supportive services, such as substance abuse counseling, case management, or recreational programs, no local share is required.

Supportive Housing Program applicants that wish to be considered for a bonus award under this set-aside will need to complete a special exhibit in the SHP application. Five points will be added to the rating score for any application containing this special exhibit, provided it is properly completed. More information about linking Supportive Housing programs with AmeriCorps will be provided in the instructions to this special exhibit.

VI. Special Incentive for Purchase of HUD Properties Under the Single Family Property Disposition Initiative

Supportive Housing funds may be used to purchase HUD properties under the Single Family Property Disposition (SFPD) Initiative for use by homeless persons. This includes both the acquisition of SFPD properties in the HUD inventory and SFPD properties currently being leased from HUD.

Current lessees of HUD-owned single-family properties and others interested in purchasing such properties for use by homeless persons now have an opportunity to purchase the properties at a 30 percent discount off the sale price. The Department is offering a special incentive for the purchase of HUD properties located in zip code areas designated by HUD as "revitalization" areas. There are 70 such zip code areas and more than 1800 HUD-owned properties are currently leased in such areas. HUD Field Offices can assist in identifying these zip code areas.

Properties located outside these areas can be sold at the standard 10 percent discount generally offered to nonprofit organizations and government agencies. However, if five or more properties located outside of revitalization areas are purchased at the same time, a 15 percent discount will be applied. The sales price, to which any discount would be applied, is the current fair market value or the value established at the time of the lease, whichever is less, provided that the lessee agrees to use the property either to house homeless persons for 10 years or to resell only to a lower income buyer.

The incentives described above should be especially attractive for organizations currently operating transitional housing for homeless persons in leased HUD-owned properties. They will have the opportunity to purchase at a discount up to 30 percent, properties for which they had a maximum five-year lease, thus sparing the necessity to either move their projects or close down completely. Current lessees who have been operating satisfactory transitional housing and who purchase properties will also have a competitive advantage under the rating criterion, "Capacity", since they may claim previous experience with HUD homeless programs.

VII. Employment Opportunities for Homeless Persons

A key goal of the continuum of care approach is to assist homeless persons to achieve independent living whenever possible. Each of the three programs under this NOFA has as a goal increasing the skill level and/or income of program participants. Employment opportunities not only help achieve these goals but are also important in rebuilding self-esteem.

The McKinney Act recognizes the importance of employment opportunities in requiring that, to the maximum extent practicable, recipients involve homeless persons through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services. Under the Supportive Housing Program, employment assistance activities are eligible, and grant recipients can use these funds for such activities as job training, wages, and educational awards for homeless persons. While Shelter Plus Care Program and SRO Program funds may only be used for rental assistance, employment assistance activities paid from other sources count towards the match requirement of the Shelter Plus Care Program and can also count for purposes of the "leveraging" rating criterion.

Inclusion in the application of employment assistance activities for homeless persons may improve the rating score under the "Quality of Project" criterion, making the application more competitive.

VIII. Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and sub-recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would have a significant impact on the formation, maintenance, and general well-being of families, but since this impact would be beneficial, no further analysis under the Order is necessary.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of activities and policies to end homelessness is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942 additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942); for further information on these documentation and public access requirements.)

Disclosures—HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the

announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts, those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Authority: 42 U.S.C. 11403 note; 42 U.S.C. 11389; 42 U.S.C. 1437a, 1437c, and 1437f; 42 U.S.C. 3535(d); 24 CFR parts 582, 583, and 882.

Dated: May 3, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Appendix: Listing of HUD Field Offices

Appendix: List OF HUD Field Offices

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for field offices; all HUD numbers, including those noted *, may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY or (1–800–877–8339) or (202) 708–9300.

Alabama—Jasper H. Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 300, Birmingham, AL 35209–3144; (205) 672–1230; TDD (205) 290–7624.

Alaska—Colleen Craig, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4399; (907) 271–4684; TDD (907) 271–4328.

Arizona—Diane LeVan, 400 N. 5th St., Suite 1600, Arizona Center, Phoenix, AZ 85004; (602) 379–4754; TDD (602) 379–4461.

Arkansas—Billy M. Parsley, TCBY Tower, 425 West Capitol Ave., Suite 900, Little Rock, AR 72201–3488; (501) 324–6375; TDD (501) 324–5931.

California—(Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235; TDD (213) 251–7038.

(Northern) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

Colorado—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Connecticut—Daniel Kolesar, 330 Main St., Hartford, CT 06106–1860; (203) 240–4508; TDD (203) 240–4522.

Delaware—John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

District of Columbia (and MD and VA suburbs)—James H. McDaniel, 820 First St., NE, Washington, DC 20002; (202) 275–0994; TDD (202) 275–0772.

Florida—James N. Nichol, 301 West Bay St., Suite 2200, Jacksonville, FL 32202–5121; (904) 232–3587; TDD (904) 791–1241.

Georgia—Charles N. Straub, Russell Fed. Bldg., Room 688, 75 Spring St., SW, Atlanta, GA 30303–3388; (404) 331–5139; TDD (404) 730–2654.

Hawaii (and Pacific)—Patti A. Nicholas, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 541–1327; TDD (808) 541–1356.

Idaho—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596 (503) 326–7018; TDD * via 1–800–877–8339.

Illinois—Richard Wilson, 77 W. Jackson Blvd., Chicago, IL 60604–3507; (312) 353–1696; TDD (312) 353–7143.

Indiana—Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204–2526; (317) 226–5169; TDD * via 1–800–877–8339.

Iowa—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Kansas—Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–5485; TDD (913) 551–6972.

Kentucky—Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–5394; TDD (502) 582–5139.

Louisiana—Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112–2887; (504) 589–7212; TDD (504) 589–7237.

Maine—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Maryland—Harold Young, 10 South Howard Street, 5th Floor, Baltimore, MD 21202–0000; (410) 962–2520x3026; TDD (410) 962–0106.

Massachusetts—Robert Paquin, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343; TDD (617) 565–5453.

Michigan—Richard Wears, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–7186; TDD * via 1–800–877–8339.

Minnesota—Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019; TDD (612) 370–3186.

Mississippi—Jeanie E. Smith, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., Room 910, Jackson, MS 39269–1096; (601) 965–4765; TDD (601) 965–4171.

Missouri—(Eastern) David H. Long, 1222 Spruce St., St. Louis, MO 63103–2836; (314) 539–6524; TDD (314) 539–6331.

(Western) Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 551–5485; TDD (913) 551–6972.

Montana—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Nebraska—Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144; TDD (402) 492–3183.

Nevada—(Las Vegas, Clark Cnty) Diane LeVan, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4754; TDD (602) 379–4461.

(Remainder of State) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576; TDD (415) 556–8357.

New Hampshire—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

New Jersey—Frank Sagarese, 1 Newark Center, Newark, NJ 07102; (201) 622–7900 x3300; TDD (201) 645–3298.

New Mexico—R. D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

New York—(Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 846–5768; TDD * via 1–800–877–8339.

(Downstate) Joan Dabelko, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885; TDD (212) 264–0927.

North Carolina—Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407; (910) 547–4006; TDD (910) 547–4055.

North Dakota—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Ohio—Jack E. Riordan, 200 North High St., Columbus, OH 43215–2499; (614) 469–6743; TDD (614) 469–6694.

Oklahoma—Katie Worsham, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102–3202; (405) 231–4973; TDD (405) 231–4181.

Oregon—John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596 (503) 326–7018; TDD * via 1–800–877–8339.

Pennsylvania—(Western) Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747.

(Eastern) John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665; TDD (215) 597–5564.

Puerto Rico (and Caribbean)—Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576; TDD (809) 766–5909.

Rhode Island—Robert Paquin, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343; TDD (617) 565–5453.

South Carolina—Louis E. Bradley, Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564; TDD * via 1–800–877–8339.

South Dakota—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Tennessee—Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 545–4393; TDD (615) 545–4559.

Texas—(Northern) R. D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447.

(Southern) John T. Maldonado, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (210) 229–6820; TDD (210) 229–6885.

Utah—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

Vermont—David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518.

Virginia—Joseph Aversano, 3600 W. Broad St., P.O. Box 90331, Richmond, VA 23230–0331; (804) 278–4503; TDD (804) 278–4501.

Washington—John Peters, Federal Office Bldg., 909 First Ave., Suite 200, Seattle, WA 98104–1000; (206) 220–5150; TDD (206) 220–5185.

West Virginia—Bruce Crawford, Old Post Office & Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747.

Wisconsin—Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Ste. 1380, Milwaukee, WI 53203–2289; (414) 297–3113; TDD * via 1–800–877–8339.

Wyoming—Sharon Jewell, First Interstate Tower North, 633 17th St., Denver, CO 80202–3607; (303) 672–5414; TDD (303) 672–5248.

[FR Doc. 94–11214 Filed 5–5–94; 4:16 pm]

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federal register

Tuesday
May 10, 1994

Part V

Federal Emergency Management Agency

Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: June 9, 1994.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 29, 1993, 58 FR 62718, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: May 4, 1994.

Michael B. Hirsch,

Acting General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
		Additions			
AK					
AK0040	Prudhoe Bay Hotel	Pouch 340004 Main St	Prudhoe Bay	AK 99734–	(907) 659–2449
AR					
AR0053	Comfort Inn	115 Barrow Hill Rd	Forrest City	AR 72335–	(501) 633–0042
AR0054	Comfort Inn	1210 Hwy. 62–65 N	Harrison	AR 72601–	(501) 741–7676
AR0055	Best Western Governors Inn.	1501 Merrill Dr	Little Rock	AR 72211–	(501) 224–8051
AZ					
AZ0173	Econo Lodge East	3601 E. Lockett Rd	Flagstaff	AZ 86004–	(602) 527–1477
AZ0175	Comfort Inn	1770 N. Dysart Rd	Goodyear	AZ 85338–	(602) 932–9191
AZ0180	Best Western at Lake Powell.	208 N. Lake Powell Blvd	Page	AZ 86040–	(602) 645–2578
AZ0177	Comfort Inn	1578 W. Thatcher	Safford	AZ 85546–	(602) 428–5851
AZ0178	Willcox Econo Lodge	724 N. Bisbee Ave	Willcox	AZ 85643–	(602) 384–4222
AZ0181	Best Western Adobe Inn	1701 N. Park Drive	Winslow	AZ 86047–	(602) 289–4638
AZ0179	Econolodge	1706 N. Park Dr	Winslow	AZ 86047	(602) 289–4687
CA					
CA1106	Comfort Inn Maingate	2200 S. Harbor Blvd	Anaheim	CA 92802–	(714) 750–5211
CA1105	Econolodge Maingate	1570 S. Harbor Blvd	Anaheim	CA 92802–	(714) 772–5721
CA1104	Friendship Inn Sunrise Motel.	705 South Beach Blvd	Anaheim	CA 92804–	(714) 761–4200
CA1107	Quality Inn Airport	4500 Pierce Rd	Bakersfield	CA 93308–	(805) 324–5555
CA1108	Sleep Inn, Barstow	1861 W. Main	Barstow	CA 92311	(619) 256–1300
CA1109	Quality Inn	7330 Eastern Ave	Bell Gardens	CA 90201–	(310) 928–3452
CA1110	Rodeway Inn	150 E. Elm St	Bishop	CA 93514–	(619) 873–3564
CA1111	Comfort Inn Camarillo	984 Ventura Blvd	Camarillo	CA 93010–	(805) 987–4188
CA1112	Canon Suites Inn	34734 Pacific Coast Hwy	Capistrano Beach	CA 92824–	(714) 248–1316

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
CA1113	Comfort Inn Castaic	31558 Castaic Road	Castaic	CA 91384–	(805) 295–1100
CA1114	Econo Lodge	3978 E. Castro Valley Blvd	Castro Valley	CA 94546–	(510) 537–8833
CA1100	Patriot Inn & Suites	2830 Iowa Ave	Colton	CA 92324–	(909) 788–9900
CA1115	Rodeway Inn, Duarte	1533 E. Huntington Dr	Duarte	CA 91010–	(818) 303–4544
CA1102	Best Western Cordelia Inn	4373 Central Pl	Fairfield	CA 94585–	(707) 864–2029
CA1116	Fremont Quality Inn	47031 Kato Road	Fremont	CA 94538–7321	(510) 490–2900
CA1140	Chateau By Picadilly Inn	5113 E. McKinley Ave	Fresno	CA 93727–	(209) 456–1418
CA1139	Piccadilly Inn Hotel—Airport.	5115 E. McKinly Ave	Fresno	CA 93727–	(209) 251–6000
CA1138	Piccadilly Inn Hotels, Shaw	2305 W. Shaw Ave	Fresno	CA 93711–	(209) 266–3850
CA1117	Econo Lodge, Glendale	1437 E. Colorado St	Glendale	CA 91205–	(818) 246–8367
CA1118	Econo Lodge	439 W. Manchester Blvd	Inglewood	CA 90301–	(310) 674–8596
CA1119	Comfort Inn Long Beach	3201 E. Pacific Coast Hwy	Long Beach	CA 90804–	(310) 597–3374
CA1122	Comfort Inn Towne	4122 S. Western Ave	Los Angeles	CA 90062–	(213) 294–5200
CA1121	Econo Lodge	11933 Washington Blvd	Los Angeles	CA 90066–	(310) 398–1651
CA1120	Hilgard House Hotel	927 Hilgard Ave	Los Angeles, CA 904	CA 90024–	(310) 208–3945
CA1123	Milpitas Comfort Inn	66 S. Main Street	Milpitas	CA 95035–	( )—
CA1124	Comfort Inn Del Monte Beach.	2401 Del Monte Ave	Monterey	CA 93540–	(408) 373–7100
CA1125	Rodeway Inn	55 Fairchild Drive	Mountain View	CA 94043–	(415) 967–6856
CA1126	Comfort Inn Airport S	2301 S. Euclid Ave	Ontario	CA 91762–	(909) 986–3556
CA1127	Comfort Inn	3240 Mather Field Road	Rancho Cordova	CA 95670–	(916) 363–3344
CA1128	Comfort Inn	1818 El Camino Real	Redwood City	CA 94063–	(415) 599–9636
CA1129	Econo Lodge	9878 Magnolia Ave	Riverside	CA 92503–	(909) 687–3090
CA1137	Best Western Inn	6500 Redwood Dr	Rohnert Park	CA 94928–	(707) 584–7435
CA1103	Hotel Nikko San Francisco	222 Mason St	San Francisco	CA 94102–	(415) 394–1111
CA1101	Pacific Heights Inn	1555 Union St	San Francisco	CA 94070–	(415) 776–3310
CA1130	Rodeway Inn	1450 Lombard St	San Francisco	CA 94123–	(415) 673–0691
CA1131	Quality Hotel San Francisco Airport S.	4000 S. El Camino Real	San Mateo	CA 94403–	(415) 341–0966
CA1132	Econo Lodge, Thousand Oaks.	1425 Thousand Oaks Blvd	Thousand Oaks	CA 91362–	(805) 496–0102
CA1133	Comfort Inn of Turlock	200 W. Glenwood	Turlock	CA 95380–	(209) 668–3400
CA1134	Comfort Inn	1282 W. 7th St	Upland	CA 91786–	(909) 985–8115
CA1136	Thunderbird Lodge	526 E. Main St	Yreka	CA 96098–	(916) 842–4404
CT					
CT0244	Ramada Hotel	100 East River Drive	East Hartford	CT 06108–	(203) 528–9703
CT0243	Quality INn Waterbury	88 Union St	Waterbury	CT 06702–	(203) 575–1500
GA					
GA0268	Quality Inn Acworth	4980 Cowan Rd	Acworth	GA 30101–	(404) 976–1922
GA0269	Holiday Inn ALbany	2701 Dawson Rd	Albany	GA 31707–	(912) 883–8100
GA0288	Courtyard by Marriott Athens.	166 Finley St	Athens	GA 30601–	(706) 369–7000
GA0261	Holiday Inn Athens	Broad & Hull & Lumpkin St	Athens	GA 30603–	(706) 549–4433
GA0300	Atlanta Hilton Northwest	2055 S. Park Pl	Atlanta	GA 30339–	(404) 953–9300
GA0270	Days Inn Atlanta	300 Spring Street	Atlanta	GA 30308–	(404) 523–1144
GA0271	Swiss 'O' Tell Atlanta	3391 Peachtree Rd NE	Atlanta	GA 30326–	(404) 265–6431
GA0264	Westin Peachtree Plaza Hotel.	210 Peachtree St. NE	Atlanta	GA 30303–	(404) 659–1400
GA0272	Holiday Inn Augusta	2155 Gordon Hwy	Augusta	GA 30909–	(706) 737–2300
GA0273	Sheraton Augusta	2651 Perimeter Pkwy	Augusta	GA 30909–	(706) 855–8100
GA0297	Quality Inn Brunswick	125 Venture Dr	Brunswick	GA 31525–	(912) 265–4600
GA0299	Best Western Calhoun	2261 Hwy. 41 NE	Calhoun	GA 30701–	(706) 629–4521
GA0296	Quality Inn Cartersville	235 Dixie Avenue	Cartersville	GA 30120–	(404) 386–0510
GA0274	Holiday Inn College Park	5010 Old National Hwy	College Park	GA 30349–	(404) 761–4000
GA0298	Ramada Inn COllege Park	1419 Virginia Ave	College Park	GA 30337-	(404) 768–7800
GA0290	Comfort Inn Columbus	3443 Macon Rd	Columbus	GA 31407	(706) 568–3300
GA0294	Econo Lodge Covington	10101 Alcovy Rd	Covington	GA 30209–	(404) 786–4133
GA0265	Days Inn Forsyth	I–75 & Lee Rd	Forsyth	GA 31029	(912) 994–2800
GA0263	Ramada Inn Jekyll Island	150 S. Beachview Dr	Jekyll Island	GA 31527–	(912) 635–2111
GA0292	Comfort Inn Kennesaw	3375 George Busbee Pkwy.	Kennesaw	GA 30144–	(404) 424–7666
GA0275	Travel Lodge Lake Park	4912 Timber Dr	Lake Park	GA 31636–	(912) 559–0110
GA0267	Welcome Inn McDonough	688 Hwy. 155 S	McDonough	GA 30253–	(404) 957–5858
GA0276	Comfort Inn Newnan	1455 Hwy. 29 S	Newnan	GA 30263–	(404) 254–0089
GA0289	Fairfield Inn by Marriott Perry.	110 Perimeter Rd	Perry	GA 31069–	(912) 987–4454
GA0277	Davis Inn	State Park Rd	Pine Mountain	GA 31822–	(706) 663–2522
GA0278	Holiday Inn Richmond Hill	I–95 & US 17 Exit 14	Richmond Hill	GA 31324–	(912) 756–3351
GA0279	Holiday Inn Rome	#20 US 411 E	Rome	GA 30161–6600	(706) 295–1100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
GA0281	Villa South Motor Inn	P.O. Box 857, 725 S. Harris St.	Sandersville	GA 31082–	(912) 552–1234
GA0282	Comfort Inn Savannah	1016 E. Hwy. 80	Savannah	GA 31408–	(912) 748–5242
GA0283	Holiday Inn Savannah Midtown.	7100 Abercorn St	Savannah	GA 31406–	(912) 352–7100
GA0284	Radisson Savannah	100 General McIntosh Blvd	Savannah	GA 31401–	(912) 233–7722
GA0285	Seventeen Hundred Inn	307 E. President St	Savannah	GA 31401–	(912) 236–7122
GA0280	Days Inn St. Simon's Island.	1701 Frederico Rd	St. Simon's Island	GA 31522–	(912) 634–0660
GA0291	Comfort Inn Statesboro	316 S. Main St	Statesboro	GA 30458–	(912) 489–2626
GA0287	Holiday Inn Tifton	US 82 & I–75	Tifton	GA 31794	(912) 382–6887
GA0286	Holiday Inn Valdosta	1309 Saint Augustine Rd	Valdosta	GA 31601–	(912) 224–2381
GA0295	Comfort Inn Warner Robins.	95 S. Hwy. 247	Warner Robins	GA 31088	(912) 922–7555
HI					
HI0167	Kuhio Village Resort	2463 Kuhio Ave	Honolulu	HI 96822–	(808) 926–0641
IA					
IA0119	Comfort In of Ames	1605 S. Dayton Rd	Ames	IA 50010–	(515) 232–0689
IA0120	Econo Lodge—Atlantic	I80 & 71 Exit 60	Atlantic	IA 50022–	(712) 243–4067
IA0121	Comfort Inn Cedar Rapids North.	5055 Rockwell Dr. NE	Cedar Rapids	IA 52402–	(319) 395–8247
IA0114	Residence Inn—Desmoines.	11428 Forest Ave	Clive	IA 50325–	(515) 223–7700
IA0122	Comfort Inn Coralville	209 W. 9th	Coralville	IA 52241–	(319) 351–8144
IA0115	Fairfield Inn By Marriott Coralville.	214 9th Street	Coralville	IA 52241–	(319) 337–8882
IA0116	Fairfield Inn by Marriott Dubuque.	3400 Dodge Street/Hwy 20W.	Dubuque	IA 52003–4213	(319) 588–2349
IA0123	Comfort Inn Fort Dodge	2928 E. 5th Ave	Fort Dodge	IA 50501–	(515) 573–3731
IA0118	Fairfield Inn by Marriott Muscatine.	305 Cleve; Amd St	Muscatine	IA 52761–	(319) 264–5566
IA0124	Comfort Inn Sioux City	4202 S. Lakeport	Sioux City	IA 51106–	(712) 274–1300
IA0105	Comfort Suites	11167 Hickman Rd	Urbandale	IA 50322–	(515) 276–1126
IA0125	Comfort Suites Urbandale	11167 Hickman	Urbandale	IA 50322–	(515) 276–1126
IA0117	Fairfield Inn by Marriott Waterloo.	2011 LA Porte Rd	Waterloo	IA 50702–	(319) 234–5452
IA0126	Best Western Quite House Suites.	1708 North Highland Street.	Williamsburg	IA 52361–	(319) 668–9777
IL					
IL0497	Best Western Inn	1150 Roosevelt Rd	Broadview	Il 60153–	(708) 681–2550
IL0490	Quality Inn	475 North Bluff Road	Collinsville	IL 62234–	(618) 344–7171
IL0496	Bestern Western Country View Inn.	P.O. Box 163, I–70 and Rte. 127.	Greenville	IL 62246–	(618) 664–3030
IL0491	Comfort Inn, Hospitality Inc	510 E. Etna Rd	Ottawa	IL61350–	(815) 433–9600
IL0492	Comfort Inn	1821 W. Reynolds St	Pontiac	IL 61764–	(815) 842–2777
IL0493	Clarion International at O'Hare.	6810 N. Mannheim Rd	Rosemont	IL 60018–	(708) 297–8464
IL0489	Summerfield Suites—Schaumburg.	901 E. Woodfield Office Ct	Schaumburg	IL 60173–	(708) 619–6677
IL0494	Quality Inn	10 W. Roosevelt Rd	Villa Park	IL 60181–	(708) 941–9100
IL0495	Waukegan Comfort Inn	3031 Belvidere	Waukegan	IL 60085–	(708) 623–1400
KY					
KY0394	Quality Hotel Riverview	666 W. 5th St	Covington	KY 41011–	(606) 491–1200
KY0395	Comfort Inn/Erlanger	630 Donaldson Rd	Erlanger	KY 41018–	(606) 727–3400
LA					
LA0102	Econo Lodge	58512 Tyler Dr	Slidell	LA 70459–	(504) 641–2153
MA					
MA0243	Best Western Terrace Motor Lodge.	1650 Commonwealth Ave	Boston	MA 02135–	(617) 566–6260
MA0240	Residence Inn Boston/North Shore.	51 Newbury St. Route 1	Danvers	MA 01923–	( )—
MA0239	Econo Lodge	321 Broadway	Malden	MA 02148–	(617) 324–8500
MA0241	Best Western Chateau	P.O. Box 155, 105 Bradford St. Ext.	Provincetown	MA 02657–	(508) 487–1286
MA0242	Best Western Tides Beachfront.	P.O. Box 617, 837 Commercial St.	Provincetown	MA 02657–	(508) 487–1045
MA0238	Comfort Inn Airport North	100 Morris St	Revere	MA 02151–	(617) 324–1900
MA0237	Quality Inn Fall River/Somerset.	1878 Wilbur Ave	Somerset	MA 02725–	(508) 678–4545

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
MA0236	Frienship Inn	99 Main St	West Dennis	MA 02670–	(508) 394–6603
MA0235	Comfort Inn Woburn	315 Mishawum Rd	Woburn	MA 01801–	(617) 935–7666
MI					
MI0273	Comfort Inn—Benton Harbor.	1598 Mall Dr	Benton Harbor	MI 49022–	(616) 925–1880
MI0272	Comfort Inn of Cedarville	P.O. Box 189, 210 W. SR–134.	Cedarville	MI 49719–	(906) 484–2266
MI0275	Quality Inn & Convention Center.	1000 Orleans Blvd	Coldwater	MI 49036–	(517) 278–2017
MI0271	Comfort Inn of Davison	10082 Lapeer Rd	Davison	MI 48423–	(313) 658–2700
MI0270	Comfort Inn	621 Tecumseh Rd	Dundee	MI 48131–	(313) 529–5505
MI0276	Quality Inn	1 West 9 Mile Rd	Hazel Park	MI 48030–	(810) 399–5800
MI0274	Comfort Inn	P.O. Box 807, 1555 N. Stephenson Ave.	Iron Mountain	MI 49801–	(906) 774–5505
MI0277	Quality Inn	5300 S. Westnedge	Kalamazoo	MI 49008–	(616) 382–1000
MI0278	Quality Suites Hotel	901 Delta Commerce Dr	Lansing	MI 48917–	(517) 886–0600
MI0268	Comfort Inn	29235 Budkingham Dr	Livonia	MI 48154–	(313) 458–7111
MI0279	Quality Inn	16999 S. Laural Park	Livonia	MI 48154–	(313) 464–0050
MI0283	Best Western—Troy/Madison Hts.	1331 W. 14 Mile Rd	Madison Heights	MI 48071–	(810) 583–7000
MI0284	Best Western—Mt. Pleasant Inn.	5770 E. Pickard St	Mt. Pleasant	MI 48858–	(517) 772–1101
MI0269	Comfort Inn	11539 O'Brian Ct	New Buffalo	MI49117–	(616) 469–4440
MI0267	Comfort Inn	1314 U.S. 31	Petoskey	MI 49770–	(616) 347–3220
MI0266	Comfort Inn	1700 Yeager	Port Huron	MI 48060–	(810) 982–5500
MI0281	Clarion Inn—Metro Airport	31200 Industrial Expressway.	Romulus	MI 48174–	(313) 728–2800
MI0282	Econo Lodge	23300 Telegraph Rd	Southfield	MI 48034–	(313) 358–1800
MI0264	Comfort Inn	11401	Utica	MI 48317–	(313) 739–7111
MI0280	Quality Inn	32035 Vandyke	Warren	MI 48093–	(313) 264–0100
MI0265	Comfort Inn Oakland/Pontiac Airport.	7076 Highland Rd	Waterford	MI 48327–	(313) 666–8555
MN					
MN0235	Best Western American Inn.	3924 Axcelsion Blvd	Minneapolis	MN 55416–	(612) 927–0133
MN0237	Best Western University Inn.	2600 University Ave. SE	Minneapolis	MN 55414–	(612) 379–2313
MN0234	Best Western Quiet House Suites.	725 Withers Harbor Dr	Red Wing	MN 55066–	(612) 388–1577
MN0236	Best Western Soldiers Field.	401 SW 6th St	Rochester	MN 55902–	(507) 288–2677
NC					
NC0288	Comfort Suites	809 Brevard Road	Asheville	NC 28806–	(704) 665–4000
NC0284	Fairfield Inn by Marriott Asheville.	31 Airport Park Drive	Asheville	NC 28732–	(704) 684–1144
NC0291	Econo Lodge Canton	55 Buckeye Cove Rd	Canton	NC 28786–	(704) 648–0200
NC0293	Comfort Inn Coliseum	4416 S. Tryon	Charlotte	NC 28217–	(704) 525–0456
NC0286	Doubletree Club Hotel	895 West Trade Street	Charlotte	NC 28202–	(704) 347–0070
NC0292	Quality Inn & Suites "Crownpoint".	2501 Sardis Road North	Charlotte	NC 28227–	(704) 845–2810
NC0287	Holiday Inn Baordeaux	1707 Owen Drive	Fayetteville	NC –	(910) 323–0111
NC0294	Comfort Inn South	1602 Mechanical Blvd	Garner	NC 27529–	(919) 779–7888
MC0295	Comfort Inn	2001 Veasley Street	Greensboro	NC 27262–	(910) 294–6220
NC0296	Comfort Inn	301 SE Greenville	Greenville	NC 27858–	(919) 756–2792
NC0297	Comfort Inn	200 W. Newber Road	Kinston	NC 28501–	(919) 527–3200
NC0298	Econo Lodge—Lenoir	206 Blowing Rock Blvd	Lenoir	NC 28645–	(704) 754–0731
NC0299	Comfort Suites	215 Wintergreen Drive	Lumberton	NC 28358–	(919) 739–8800
MC0285	Fairfield Inn by Marriott Lumberton.	3361 Lackey Street	Lumberton	NC 28258–	(910) 739–8444
NC0300	Econo Lodge	Rt 1, Box 68A	Marion	NC 28752–	(704) 659–7940
NC0301	Comfort Inn East	US 74E & SR 51	Matthews	NC 28105–	(704) 847–5252
NC0302	Quality Inn/Sea Oatel	7123 South Virginia Dare Trail.	Nags Head	NC 27959–	(919) 441–7191
NC0303	Comfort Suites	218 E. Front Street	New Bern	NC 28560–	(919) 636–0022
NC0305	Comfort Suites Crabtree Hotel.	3908 Arrow Drive	Raleigh	NC 27612–	(919) 782–6868
NC0304	Quality Suites Hotel	4400 Capital Blvd	Raleigh	NC 27604–	(919) 876–2211
MC0306	Mid Pines Resort	1010 Midland Road	Southern Pines	NC 28387–	(910) 692–2114
NC0308	Comfort Inn Statesville	1214 Greenland Street	Statesville	NC 28677–	(704) 873–2044
NC0309	Econo Lodge	1220 W. 15th Street	Washington	NC 27889–	(919) 946–7781

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
NC0311	Quality Inn	US 421 & 268 Bypass	Wilkesboro	NC 28697–	(910) 667–2176
NC0310	Comfort Inn	1636 Carolina Avenue	Wilmington	NC 27889–	(919) 946–4444
NC0312	Sleep Inn of Yadkinville	Sharon Drive	Yadkinville	NC 27055–	(910) 679–5000
NJ					
NJ0164	Comfort Inn North	405 E Absecon Blvd	Absecon	NJ 08201–	(609) 646–5000
NJ0165	Econo Lodge	328 WHP Route 30	Absecon	NJ 08201–	(609) 652–3300
NJ0163	Friendship Inn	316 E Route 30	Absecon	NJ 08201–	(609) 652–0904
NJ0166	Econo Lodge	146 Old Tuckahoe Rd	Buena	NJ 08310–	(609) 697–9000
NJ0167	Econo Lodge Cardiff	6641 Black Horse Pike	Cardiff	NJ 08232–	(609) 484–8500
NJ0168	Econo Lodge	395 Washington Ave	Carlstadt	NJ 07072–	(201) 935–4600
NJ0162	Holiday Inn Livingston	550 W MT Pleasant Ave	Livingston	NJ 07039–	(201) 994–3500
NJ0161	Howard Johnson Lodge	750 Highway 35	Middletown	NJ 07748–	(908) 671–3400
NJ0169	Clarion Hotel At Mt Laurel	915 Route 73 N	Mt Laurel	NJ 08054–	(609) 234–7300
NJ0175	Econo Lodge—Mt Laurel	611 Fellowship Rd	Mt Laurel	NJ 08054–	(609) 722–1919
NJ0170	Comfort Inn Victorian	6817 Black Horse Pike	Pleasantville	NJ 08232–	(609) 646–8880
NJ0171	Comfort Inn	101 E 9th Ave	Runnemede	NJ 08078–	(609) 939–6700
NJ0176	Comfort Inn	I–287 & Stelton Rd	So Plainfield	NJ 07080–	(908) 561–4488
NJ0174	Comfort Inn West	7095 Black Horse Pike	W Atlantic City	NJ 08232–	(609) 645–1818
NJ0172	Econo Lodge	5309 Hwy 33 & 34	Wall	NJ 07727–	(908) 938–3110
NJ0173	Spring Lake Comfort Inn	1909 Hwy 35	Wall	NJ 07719–	(908) 449–6146
NY					
NY0559	Comfort Inn—Albany	1606 Central Avenue	Albany	NY 12205–	(518) 869–5327
NY0560	Econo Lodge	Rt. 11, Upper Court Street	Binghamton	NY 13904–	(607) 775–3443
NY0561	Clifton Park Comfort Inn	41 Fire Rd, Old Rt. 146	Clifton Park	NY 12065–	(518) 373–0222
NY0562	Darien Lakes Econo Lodge	8493 Rt. 77	Corfu	NY 14036–	(716) 599–4681
NY0563	Econo Lodge—Hicksville	429 Duffy Ave	Hicksville	NY 11801–	(516) 433–3900
NY0564	Econo Lodge Lake George Motel.	431 Canada St	Lake George	NY 12845–	(518) 668–2689
NY0565	Comfort Inn Lockport	551 S. Transit St	Lockport	NY14094–	(716) 434–4411
NY0557	Ramada Plaza Hotel	One Ramada Plaza	New Rochelle	NY 10801–	(914) 576–3700
NY0566	Quality Hotal by Journey's End.	3 East 40th Street	New York	NY 10016–	(212) 447–1500
NY0558	The Drake Swissotel	44 Park Ave. at 56th St	New York	NY 10022–	(212) 421–0900
NY0567	Econo Lodge—Oswego	20 Hickory Park Rd	Oswego	NY 13827–	(607) 687–9000
NY0568	Comfort Inn Plainview	333 S. Service Rd	Plainview	NY 11803–	(516) 694–6500
NY0569	Comfort Inn	411 Route 3	Plattsburgh	NY 12901–	(518) 562–2730
NY0571	Comfort Inn Airport	395 Buell Rd	Rochester	NY 14624–	(716) 436–4400
NY0570	Econo Lodge Rochester South.	940 Jefferson Street	Rochester	NY 14623–	(716) 427–2700
OH					
OH0524	Embassy Suites	3775 Park East Dr	Beachwood	OH 44122–	(216) 765–8066
OH0525	Best Western Bellevue Resort Inn.	1120 Main St	Bellevue	OH 44811–	(419) 483–5740
OH0526	Best Western Mariemont Inn.	5880 Wooster Pike	Cincinnati	OH 45227–	(513) 271–2100
OH0527	Holiday Inn Cincinnati North.	2235 Sharon Rd	Cincinnati	OH 45241–	(513) 771–0700
OH0513	Quality Inn	1717 Glendale Milford Rd	Cincinnati	OH 45215–	(513) 771–5252
OH0529	Glidden House	1901 Ford Dr	Cleveland	OH 44106–	(216) 231–8900
OH0530	Residence Inn by Marriott Columbus East.	2084 S. Hamilton Rd	Columbus	OH 43232–	(614) 864–8844
OH0531	Sheraton Suites	201 Hutchinson Ave	Columbus	OH 43235–	(614) 436–0004
OH0514	Comfort Inn Dayton	7125 Miller Ln	Dayton	OH 45414–	(513) 890–9995
OH0515	Comfort Inn	1900 N. Clinton St	Defiance	OH 43512–	(419) 784–4900
OH0516	Econo Lodge	5151 Rt. 127 N	Eaton	OH 45320–	(513) 456–5959
OH0517	Fairfield Inn Fairborn	2500 Paramount Pl	Fairborn	OH 45324–	(513) 427–0800
OH0518	Hampton Inn Fairborn	2550 Paramount Pl	Fairborn	OH 45324–	(513) 429–5505
OH0511	Clarion Carriage House Inn.	301 Broadway Ave	Lorain	OH 44052–	(216) 246–5767
OH0519	Comfort Inn Marion	256 Jamesway	Marion	OH 43302–	(614) 389–5521
OH0520	Comfort Inn Cedar Point South.	11020 Milan Rd	Milan	OH 44846–	(419) 499–4681
OH0533	Howard Johnson	775 Hebron Rd	Newark	OH 43055–	(614) 522–3191
OH0521	Comfort Inn	7525 US 23	Piketon	OH 45661–	(614) 289–3000
OH0522	Rodeway Inn Cedar Point	2905 Milan Rd	Sandusky	OH 44870–	(419) 625–1291
OH0532	Comfort Inn	4949 Park Ave. W	Seville	OH 44273–	(216) 769–4949
OH0523	Quality Inn East	28600 Ridgehills Dr	Wickliffe	OH 44092–	(216) 585–0600
SC					
SC0194	Econo Lodge	1153 S. Main St	Bishopville	SC 29010–	(803) 428–3200
SC0193	Econo Lodge South	I–95 and US 76	Florence	SC 29501–	(803) 662–7712

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
SC0201	Econo Lodge	401 Goose Creek Blvd	Goose Creek	SC 29445–	(803) 797–8200
SC0200	Comfort Inn Executive Center.	540 Pleasantburg Dr	Greenville	SC 29607–	(803) 271–0060
SC0195	Quality Inn Hayward	50 Orchard Park Dr	Greenville	SC 29615–	(803) 297–9000
SC0191	Comfort Inn	2 Tanglewood Dr	Hilton Head Island	SC 29928–	(803) 842–6662
SC0202	Comfort Inn	PO Box 57, I–95 and Hwy. 261, Exit 119.	Manning	SC 29102–	(803) 473–7550
SC0190	Comfort Inn	1147 Wilson Rd	Newberry	SC 29108–	(803) 276–1600
SC0199	Comfort Inn	3671 St. Matthews Rd	Orangeburg	SC 29115–	(803) 531–9200
SC0189	Econo Lodge	Rt. 1 Box 1820, I–77 Exit 65 and Hwy. 9.	Richbury	SC 29729–	(803) 789–3000
SC0196	Ridgeland Comfort Inn	Hwy. 278 and I–95 Exit 21	Ridgeland	SC 29936–	(803) 726–2121
SC0197	Econo Lodge Summerville	110 Holiday Dr	Summerville	SC 29483–	(803) 875–3022
TX					
TX0445	Arlington Marriott	1500 Convention Center Dr.	Arlington	TX 76011–	(817) 261–8200
TX0447	Fairfield Inn by Marriott Arlington.	2500 E. Lamar	Arlington	TX 76006–	(817) 649–5800
TX0449	Residence Inn Fort Worth River Plaza.	1701 S. University Dr	Fort Worth	TX 76107–6535	(817) 870–1011
TX0450	Best Western Midlothian Inn.	220 N. Hwy. 67	Midlothian	TX76065–	(214) 775–1891
TX0448	Best Western Continental Inn Motel.	9735 IH–35 N	San Antonio	TX 78233–	(210) 655–3510
VA					
VA0532	Best Western Manassas	8640 Mathis Avenue	Manassas	VA 22110–0000	(703) 368–7070
VA0533	Best Western Center Inn	One Best Square (US 13)	Norfolk	VA 23502–0000	(804) 461–6600
WA					
WA0236	Econo Lodge of Sequim	801 E. Washington	Sequim	WA 98382–1570	(206) 683–8790
WA0238	Comfort Inn Broadway	6309 E. Broadway	Spokane	WA 99212–	(509) 535–7185
WA0239	Best Western Tacoma Inn Copperfields.	8726 S. Hosmer St	Tacoma	WA 98444–	(206) 535–2880
WA0235	Comfort Inn	13207 NE 20th Ave	Vancouver	WA 98686–	(206) 574–6000
WI					
WI0200	Residence Inn Appleton	310 Metro Dr	Appleton	WI 54915–	(414) 954–0570
WI0199	Pfister Hotel	424 East Wisconsin Avenue.	Milwaukee	WI 53202–	(414) 273–8222
WI0198	Skyline Motel	804 North Lake Avenue	Phillips	WI 54555–	(715) 339–3086
WY					
WY0084	Comfort Inn Buffalo	65 Hwy. 16 E	Buffalo	WY 82834–	(307) 684–9564
		Corrections/Changes			
AR					
AR0023	Econo Lodge W. Memphis	2315 S. Service Rd	West Memphis	AR 72301–	(501) 732–2830
AZ					
AZ0176	Quality Inn	1400 E. Andy Devine Ave	Kingman	AZ 86401–	(602) 753–4747
AZ0079	Rodeway Inn of Scottsdale	7110 E. Hubbell	Scottsdale	AZ 85251–	(602) 946–3456
CA					
CA0980	The Kawada Hotel	200 S. Hill St	Los Angeles	CA 90012–	(213) 621–4455
CA0711	Quality Suites	651 Five Cities Dr	Pismo Beach	CA 93449–	(805) 773–3773
CA0874	Comfort Suites Mission Valley.	631 Camino Del Rio, S	San Diego	CA 92108–	(619) 294–3444
CA0532	Econo Lodge	3880 Greenwood	San Diego	CA 92110–	(619) 543–9944
CA0659	Quality Suites San Diego North.	9880 Mira Mesa Blvd	San Diego	CA 92131–	(619) 530–2000
CA0913	Quality Hotel and Conference Center.	1101 Van Ness Ave	San Francisco	CA 94109–	(415) 776–8200
CA0895	Quality Suites Santa Ana	2620 Hotel Terrace Dr	Santa Ana	CA 92705–	(714) 966–5200
CA0447	Quality Suites Orange County Airport.	2701 Hotel Terrace Dr	Santa Ana	CA 92705–	(714) 957–9200
CA0213	Ramada Grand Avenue Hotel.	2726 S. Grand Ave	Santa Ana	CA 92705–	(714) 966–1955
CA0973	Quality Suites Silicon Valley.	3100 Lakeside Dr	Santa Clara	CA 95054–	(408) 748–9800
CA0883	Comfort Suites	121 E. Grand Ave	South San Francisco	CA 94080–	(415) 509–7766
CA1135	Comfort Inn	1185 Admiral Callaghan Lane.	Vallejo	CA 94591–	(707) 648–1400

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
CT					
CT0211	Quality Inn	Newton Rd	Danbury	CT 06810–	(203) 748–6677
CT0072	Quality Inn	404 Bridge St	Groton	CT 06340–	(203) 445–8141
GA					
GA0001	Super 8 Motel Albany	2444 N. Slappey Blvd	Albany	GA 31702–	(912) 888–8388
GA0260	Holiday Inn Athens Courtyard.	Hull & Wray Sts	Athens	GA 30603–	(706) 549–4433
GA0008	Atlanta Marriott Marquis	265 Peachtree Ctr. Ave. NE.	Atlanta	GA 30303–	(404) 521–0000
GA0301	B.W. Bradbury Suites	4500 Cir. 75 Pkwy	Atlanta	GA 30339–	(404) 956–9919
GA0302	B.W. Bradbury Suites	1062 Claussen Rd	Augusta	GA 30907–	(706) 733–4656
GA0124	Ramada Inn Cordele	2016 16th Ave. E	Cordele	GA 31015–	(912) 273–5000
GA0256	Glennville Inn	812 N. Main St	Glennville	GA 30427–	(912) 654–3407
GA0020	Courtyard by Marriott Atlanta Airport North.	3399 International Blvd	Hapeville	GA 30354–	(404) 559–1043
GA0266	Welcome Inn Macon	4709 Chambers Road	Macon	GA 31206–	(912) 781–6680
GA0304	B.W. Bradbury Inn	5985 Oakbrook Pkwy	Norcross	GA 30093–	(404) 662–8175
GA0121	Peachtree Executive Conference Center.	2443 Hwy 54 W	Peachtree City	GA 30269–	(404) 487–2000
GA0293	Econo Lodge Richmond Hill.	I–95 & US 17	Richmond Hill	GA 31324–	(912) 756–3312
GA0017	Charter House Inn	2710 Osborne Rd	Saint Mary's	GA 31558–	(912) 882–6250
GA0224	Kings Bay Lodges	603 San Bar Dr	Saint Mary's	GA 31558–	(912) 882–8900
GA0089	King & Prince Beach Resort.	201 Arnold Rd	Saint Simon's Island	GA 31522–	(912) 638–3631
GA0088	Hyatt Regency Savannah	Two W. Bay St	Savannah	GA 31401–	(912) 238–1234
GA0303	B.W. Bradbury Suites	2060 Crescent Centre Blvd	Tucker	GA 30084–	(404) 496–1070
GA0176	Shoney's Inn Valdosta	1828 W. Hill Ave	Valdosta	GA 31601–	(912) 244–7711
IA					
IA0055	Best Western Metro Omaha.	3537 W. Broadway	Council Bluffs	IA 51501–	(712) 328–3171
IA0007	Best Western Denison's Inn.	502 Boyer Valley Road	Denison	IA 51442–	(712) 263–5081
IA0076	Best Western Des Moines West Exect. Cntr.	11040 Hickman Rd	Des Moines	IA 50325–	(515) 278–5575
IA0020	Days Inn Ottumwa	206 Church St	Ottumwa	IA 52502–	(515) 682–8131
IA0003	Best Western Norseman Inn.	3086 220th St	Williams	IA 50271–	(515) 854–2281
IL					
IL0009	Econo Lodge	810 W. Lincoln	Charleston	IL 61920-	(217) 345–7689
IL0099	Econo Lodge Motel	1205 N. Keller Dr	Effingham	IL 62401–	(217) 347–7132
IL0459	Comfort Suites Marion	2608 W. Main	Marion	IL 62959–	(618) 997–9133
IL0439	Peoria Comfort Suites	4021 War Memorial Dr	Peoria	IL 61614–	(309) 688–3800
IL0482	Residence Inn—Peoria	4201 N. War Memorial Dr	Peoria	IL 61614–	(309) 681–9000
IL0481	Residence Inn—Rockford	7542 Colosseum Dr	Rockford	IL 61107–	(815) 227–0013
KY					
KY0042	Comfort Inn—Elizabethtown.	122 N. Main St	Elizabethtown	KY 42701–	(502) 769–3030
KY0064	Best Western Parkside	80 Chenault Road	Frankfort	KY 40601–	(502) 695–6111
KY0077	Econo Lodge of Georgetown.	3075 Paris Pike	Georgetown	KY 40324–	(502) 863–2240
KY0112	Econo Lodge	2916 Ft. Campbell Blvd	Hopkinsville	KY 42240–	(502) 886–5242
KY0120	Best Western Luxbury Hotel.	1005 New Moody Ln	La Grange	KY 40031–	(502) 222–5500
KY0236	Best Western Kastle Inn	Hwy 25 S	Mt. Vernon	KY 40456–	(606) 256–5156
KY0291	Quality Inn	438 S. Dixie Blvd	Radcliff	KY 40160–	(502) 351–8211
KY0313	Best Western Motel	Lakeview Drive	Shepherdsville	KY 40165–	(502) 543–7097
MI					
MI0244	The Friendship Inn	09817 M–140 Hwy	South Haven	MI 49090–	(616) 637–5141
MN					
MN0014	The Thunderbird Hotel and Convention Center.	2201 E. 78th St	Bloomington	MN 55425–1228	(612) 854–3411
NC					
NC0126	Econo Lodge—Crystal Coastal.	3410 Bridges St	Morehead City	NC 28557–	(919) 247–2940
NE					
NE0045	Best Western White House Inn.	305 N. Fort Crook Rd	Bellevue	NE 68005–	(402) 293–1500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
NE0003	Best Western—Central Executive Center.	3650 S. 72nd St. at I–80	Omaha	NE 68124–3586	(402) 397–3700
NJ					
NJ0134	Econo Lodge	187 Route 130 N	Bordentown	NJ 08505–	(609) 298–5000
NJ0144	Best Western/Fairfield Executive Inn.	216–234 Rt 46 E	Fairfield	NJ 07004–	(201) 575–7700
NJ0100	Radisson Hotel & Suites Fairfield.	690 Rt 46 E	Fairfield	NJ 07004–	(201) 227–9200
NJ0020	Quality Inn	10 Polito Ave	Lyndhurst	NJ 07071–	(201) 933–9800
NJ0042	Quality Inn	815 Rt 37 W	Toms River	NJ 08755–	(908) 341–2400
NY					
NY0163	Econo Lodge	2303 N. Triphammer Rd	Ithaca	NY 14850–	(607) 257–1400
NY0097	Comfort Inn	PO Box 3296 2800 N. Main St. Ext.	Jamestown	NY 14701–	(716) 664–5920
NY0533	Econo Lodge Syracuse Liverpool.	401–407 7th N. St	Liverpool	NY 13088–	(315) 451–6000
NY0162	Econo Lodge	200 Robert Dann Dr	Painted Post	NY 14870–	(607) 962–4444
NY0270	Inn at Saratoga	231 Broadway	Saratoga Springs	NY 12866–	(518) 583–1890
NY0159	Econo Lodge	Rt 59	Spring Valley	NY 10977–	(914) 623–3838
NY0212	Hotel Syracuse	500 S. Warren St	Syracuse	NY 13202–	(315) 471–7300
NY0513	Westchester Marriott	670 White Plains Rd	Tarrytown	NY 10591–	(914) 631–2200
OH					
OH0011	Ohio University Inn	PO Box 713 331 Richland Ave.	Athens	OH 45701–	(614) 593–6449
OH0172	Aurora Inn Operating Prtn LP.	PO Box 197 Rt 82 & 306	Aurora	OH 44202–	(216) 562–6121
OH0212	Angel Motel	1024 N. Main St	Bowling Green	OH 43402–	(419) 352–3170
OH0512	Comfort Inn	5345 Broodmoor Cir. NW	Canton	OH 44709–	(216) 492–1331
OH0263	Cincinnatian Hotel	601 Vine St	Cincinnati	OH 45202–	(513) 381–3000
OH0352	Garfield House	2 Garfield Pl	Cincinnati	OH 45202–	(513) 421–3355
OH0255	Westin Hotel Cincinnati	Fountainview Square S	Cincinnati	OH 45202–	(513) 621–7700
OH0528	Courtyard by Marriott Cleveland.	3695 Orange Pl	Cleveland	OH 44122–	(219) 765–1900
OH0132	Jay Hotel	2515 Jay Ave	Cleveland	OH 44113–	(216) 621–1675
OH0169	Ritz Carlton Hotel	1515 W. 3rd St	Cleveland	OH 44113–	(216) 623–1300
OH0355	Comfort Inn	1221 E. Dublin Granville Rd.	Columbus	OH 43279–	(614) 885–4084
OH0328	Courtyard by Marriott Columbus Downtown.	35 W. Spring St	Columbus	OH 43215–	(614) 228–3200
OH0294	German Village Inn Motel Inc.	920 S. High St	Columbus	OH 43206–	(614) 443–6506
OH0339	Holiday Inn Worthinton	175 Hutchinson Ave	Columbus	OH 43235–	(614) 885–3334
OH0305	Trueman Club Hotel	900 E. Dublin Granville	Columbus	OH 43229–	(614) 888–7440
OH0379	Daytonian Hilton	11 S. Ludlow St	Dayton	OH 45402–	(513) 461–4700
OH0489	Wright Motel	18 S. Broad St	Fairborn	OH 45324–	(513) 878–9395
OH0091	Fountain Inn Motel	225 Maple Ave	Lakeside	OH 43440–	(419) 798–4461
OH0050	Golden Lamb	27 Broadway	Lebanon	OH 45036–	(513) 932–5065
OH0014	Inn at Cedar Falls	21190 SR 374	Logan	OH 43138–	(614) 985–7489
OH0445	Comfort Inn	855 Comfort Plaza Dr	Mansfield	OH 44904–	(419) 886–4000
OH0018	Lafayette Hotel Inc	101 Front St	Marietta	OH 45750–	(614) 373–5522
OH0437	Inn at Honey Run	6920 CR 203	Millersburg	OH 44654–	(216) 667–4011
OH0109	Bryan Montpelier Holiday Inn.	RR 3	Montpelier	OH 43543–	(419) 485–5555
OH0421	Comfort Inn Cedar Point Maingate.	1711 Cleveland Rd	Sandusky	OH 44870–	(419) 625–4700
OH0413	Sandusky Cedar Point Travelodge.	5906 Milan Rd	Sandusky	OH 44870–	(419) 627–8971
OH0131	Residence Inn by Marriott Cleveland Westlake.	30100 Clemens Rd	Westlake	OH 44145–	(216) 892–2254
OH0479	Wooster Inn	810 E. Wayne Ave	Wooster	OH 44691–	(216) 264–2341
OH0321	Worthington Inn	649 High St	Worthington	OH 43085–	(614) 885–2600
SC					
SC0192	Comfort Inn	Rt1. Bx 1058 I–26 Hwy 56 Exit 52.	Clinton	SC 29325–	(803) 833–5558
SC0198	Econo Lodge	1057 Sniders Hwy	Walterboro	SC 29488–	(803) 538–3830
TX					
TX00446	Courtyard by Marriott Houston/North Loop.	2504 North Loop West	Houston	TX 77092–	(713) 335–1300

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST APRIL 20, 1994 UPDATE—Continued

Index	Property name	PO box/rt # street address	City	State/zip	Telephone
VA					
VA0503	Best Western Old Colony Inn.	625 First Street	Alexandria	VA 22314–	(703) 548–6300
VA0460	Howard Johnson National Airport.	2650 Jefferson Davis Highway.	Arlington	VA 22202–0000	(703) 684–7200
VA0510	Hampton Inn	7295 Williamson Blvd	Manassas	VA 22110–	(703) 369–1100
WA					
WA0237	Quality Inn Lewis and Clark.	700 Port Dr	Clarisston	WA 99403–	(509) 758–9500
WA0240	Best Western Choice Lodge.	24415 Russell Rd	Kent	WA 98032–	(206) 854–8767
WA0045	Best Western Icicle Inn	505 Hwy. 2	Leavenworth	WA 98226–	(509) 548–7000
WI					
WI0092	Best Western Welcome Inn Lancaster.	420 W. Maple St	Lancaster	WI 53813–	(608) 723–4162
WI0125	Best Western Woods View Inn.	5501 W. National Ave	Milwaukee	WI 53214–	(414) 671–6400
WY					
WY0078	Comfort Inn at Buffalo Bill Village Cody.	1601 Sheridan Ave	Cody	WY 82414–	(307) 587–5556
WY0040	Antler Motel Friendship Inn Jackson.	43 W. Pearl	Jackson	WY 83001–	(307) 733–2535
Deletions					
AZ					
AZ0174	Quality Inn	2000 S. Milton Rd	Flagstaff	AZ 85001–	(602) 774–8771
GA					
GA0175	Omni Hotel Cnn Center	100 Cnn Ctr	Atlanta	GA 30335–	(404) 659–0000
IA					
IA0105	Comfort Inn	410 5th St. SW	Mason City	IA 50401–	(515) 423–4444
MI					
MI0075	Best Western Inn Troy Madison Heights.	1331 W. 14 Mile	Madison Heights	MI 48071–	(313) 583–7000
NC					
NC0289	Econo Lodge	190 Tunnel Road	Asheville	NC 28805–	(704) 254–9521
NC0290	Comfort Inn—Hatteras Island.	PO Box 1089, Old Lighthouse Road.	Buxton	NC 27920–	(919) 995–6100
NC0244	Comfort Suites	215 Wintergreen Dr	Lumberton	NC 28358–	(919) 739–8800
NC0257	Comfort Inn	1214 Greenland Dr	Statesville	NC 28677–	(704) 873–2044
NC0307	Comfort Inn Statesville	1214 Greenland Street	Statesville	NC 28677–	(704) 873–2044
OH					
OH0238	Comfort Suites	11349 Reed Hartman Rd	Blus Ash	OH 45242–	(513) 530–5999
OH0076	Sheraton Westgate	3536 Secor Rd	Toledo	OH 43606–	(419) 535–7070
VA					
VA0278	Quality Inn	7295 Williamson Blvd	Manassas	VA 22110–	(703) 369–1100
WI					
WI0133	Hampton Inn Madison West.	516 Grand Canyon Dr	Madison	WI 53719–	(608) 833–3511

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Tuesday
May 10, 1994

Part VI

Office of Management and Budget

Report on Executive Order No. 12866, Regulatory Planning and Review; Notice

fourth section comments generally on issues raised as a result of our experience or from comments received from agencies and members of the public.

I. History of the Regulatory Programs of the U.S. Government

The Federal Government affects the lives of its citizens in a variety of ways through taxation, spending, grants and loans, and through regulation. Over time, regulation has become increasingly prevalent in our society, and the importance of our regulatory activities cannot now be overstated.

The History of Major Regulatory Programs

Federal regulation as we know it began in the late 19th century with the creation of the Interstate Commerce Commission, which was charged with protecting the public against excessive and discriminatory railroad rates. The regulation was economic in nature, setting rates and regulating the provision of railroad services. Having achieved some success, this administrative model of an independent, bipartisan commission, reaching decisions through an adjudicatory approach, was used for the Federal Trade Commission (1914), the Water Power Commission (1920) (later the Federal Power Commission), and the Federal Radio Commission (1927) (later the Federal Communications Commission). In addition, during the early 20th century, Congress created several other agencies to regulate commercial and financial systems—including the Federal Reserve Board (1913), the Tariff Commission (1916), the Packers and Stockyards Administration (1916), and the Commodities Exchange Authority (1922)—and to ensure the purity of certain foods and drugs, the Food and Drug Administration (1931).

Federal regulation began in earnest in the 1930s with the implementation of wide-ranging New Deal regulatory programs.

Some of the New Deal economic regulatory programs were implemented by the Federal Home Loan Bank Board (1932), the Federal Deposit Insurance Corporation (1933), the Commodity Credit Corporation (1933), the Farm Credit Administration (1933), the Securities and Exchange Commission (1934), and the National Labor Relations Board (1935). In addition, the jurisdiction of both the Federal Communications Commission and the Interstate Commerce Commission were expanded to regulate other forms of communications (e.g., telephone and telegraph) and other forms of transport (e.g., trucking). In 1938, the role of the Food and Drug Administration was expanded to include prevention of harm to consumers in addition to corrective action. The New Deal also called for the establishment of the Employment Standards Administration (1933), and of Social Security (1933) and related programs.

A second burst of regulation began in the late 1960s with the enactment of comprehensive, detailed legislation intended to protect the consumer, improve environmental quality, enhance work place safety, and assure adequate energy supplies. In contrast to the pattern of economic regulation adopted before and during the New Deal, the new social regulatory programs tended to cross many sectors of the economy (rather than individual industries) and affect industrial processes, product designs, and by-products (rather than entry, investment, and pricing decisions).

The consumer protection movement led to creation in the newly formed Department of Transportation of several agencies designed to improve transportation safety. They included the Federal Highway Administration (1966), which sets highway and heavy truck safety standards; the Federal Railroad Administration (1966), which sets rail safety standards; and the National Highway Traffic Safety Administration (1970), which sets safety standards for automobiles and light trucks. Regulations were also authorized pursuant to the Truth in Lending Act, the Equal Credit Opportunity Act, the Consumer Leasing Act, and the Fair Debt Collection Practices Act. The National Credit Union Administration (1970) and the Consumer Product Safety Commission (1972) were also created to protect consumer interests.

In 1970, the Environmental Protection Agency was created to consolidate and expand environmental protection programs. Its regulatory authority was expanded through the Clean Air Act (1970), the Clean Water Act (1972), the Safe Drinking Water Act (1974), the Toxic Substances Control Act (1976), and the Resource Conservation and Recovery Act (1976). This effort to improve environmental protection also led to the creation of the Materials Transportation Board (1975) (now part of the Research and Special Programs Administration in the Department of Transportation) and the Office of Surface Mining Reclamation and Enforcement (1977) in the Department of the Interior.

The Occupational Safety and Health Administration (1970) was established in the Department of Labor to enhance work place safety. It was followed by the Mining Enforcement and Safety Administration (1973), now the Mine Safety and Health Administration, also in the Department of Labor. The Pension Benefit Guaranty Corporation was directed to administer pension plan insurance systems in 1974.

Also in the 1970s, the Federal Government attempted to address the problems of the dwindling supply and the rising costs of energy. In 1973, the Federal Energy Administration (FEA) was directed to manage short-term fuel shortage. Less than a year later, the Atomic Energy Commission was divided into the Energy Research and Development Administration (ERDA) and an independent Nuclear Regulatory Commission. In 1977, the FEA, ERDA, the Federal Power Commission, and a number of other energy program responsibilities were merged into the Department of Energy and the independent Federal Energy Regulatory Commission.

Another significant regulatory agency, the Department of Agriculture (1862), has grown over time so that it now regulates the price, production, import, and export of agricultural crops; the safety of meat, poultry, and certain other food products; a wide variety of other agricultural and farm-related activities; and broad-reaching welfare programs. Agriculture regulatory authorities have changed over time, but now include the U.S. Forest Service (1905), the Farmers Home Administration (1921), the Soil Conservation Service (1935), the Agricultural Stabilization and Conservation Service (1961), the Food and Nutrition Service (1969), the Agricultural Marketing Service (1972), the Federal Grain Inspection Service (1976), the Animal and Plant Health Inspection Service (1977), the Foreign Agricultural Service (1974), The Food Safety and Inspection Service (1981), and the Rural Development Administration (1990).

The consequence of the long history of regulatory activities is that Federal regulations now affect virtually all individuals, businesses, State, local, and tribal governments, and other organizations in virtually every aspect of their lives or operations. Some rules are based on old statutes; others on relatively new ones. Some regulations are critically important (such as the safety criteria for airlines or nuclear power plants); some are relatively trivial (such as setting the times that a draw bridge may be raised or lowered). But each has the force and effect of law and each must be taken seriously.

The Nature of Regulation

It is conventional wisdom that competition in the marketplace is the most effective regulator of economic activity. Why then is there so much regulation? The answer is that markets are not always perfect and when that occurs, society's resources may be imperfectly or inefficiently used. The advantage of regulation is that it can improve resource allocation or help obtain other societal benefits. For example, consider the following situations:

—Certain markets may not be sufficiently competitive, thus potentially subjecting consumers to the harmful exercise of market power (such as higher prices or artificially limited supplies). Regulation can be used to promote competition (for example, removing barriers to entry) and to ensure that firms engage in fair trade practices such as the sale of dangerous substances.

—In an unregulated market, firms and individuals may impose costs on others—including future generations that are not reflected in the prices of the products they buy and sell. They may pollute streams, cause health hazards, or endanger the safety of their workers or customers. Regulation can be used to reduce these harmful effects by prohibiting certain activities or imposing the societal costs of the activity in question on those causing harm. One goal of regulation is to induce private parties to act as they would if they had to bear the full costs that they impose on others.

—Similarly, in an unregulated market, firms and individuals may not have incentives to provide individuals with accurate or sufficient information needed to make intelligent choices. Firms may mislead consumers or take advantage of consumer ignorance to market unsafe or risky products. Regulation may be needed to require disclosure of information, such as the possible side effects of a drug, the contents of a food or packaged good, the energy efficiency of an appliance, or the full cost of a home mortgage.

—Even when consumers have full information, the Government may wish to protect individuals, especially children, from their own actions. Regulation may thus be used to restrict certain unacceptable or harmful practices.

—Regulation can also be beneficial in achieving goals that reflect our national values, such as equal opportunity and universal education, or a respect for individual privacy.

There are also many potential disadvantages of regulating, to the Government, to those regulated, and to society at large.

—The direct costs of administering, enforcing, and complying with regulations may be substantial. Some of these costs may be borne by the Government, while others are paid for by firms and individuals, eventually being reflected in the form of higher prices, lower wages, reduced output, and investment, research, and expansion foregone.

—There are also disadvantages of regulation that are difficult to measure, such as adverse effects on flexibility and innovation, which may impair productivity and competitiveness in the global marketplace, and counterproductive private incentives, which may distort investment or reduce needed supporting activities.

In short, regulations (like other instruments of government policy) have enormous potential for both good and harm. Well-chosen and carefully crafted regulations can protect consumers from dangerous products and ensure they have information to make informed choices. Such regulations can limit pollution, increase worker safety, discourage unfair business practices, and contribute in many other ways to a safer, healthier, more productive, and more equitable society. Excessive or poorly designed regulations, by contrast, can cause confusion and delay, give rise to unreasonable compliance costs in the form of capital investments and on-going paperwork, retard innovation, reduce productivity, and accidentally distort private incentives.

The challenge for regulators is to approach their task with an appreciation and respect for the complexity of the problems they must solve and the diversity of the individuals and institutions their work affects. In doing this, they need to balance a number of conflicting objectives, to apply sensitivity and judgment to the best available information, and ultimately to achieve the most effective means to the desired ends. The efforts to do this, especially in the recent past, have not been particularly successful, and the American people have indicated their irritation, if not anger, at the maze of inconsistent, duplicative, and excessive rules that can cause more harm than good.

Executive Order No. 12866 was developed to bring the Government back to the task at hand—to design sensible regulations that improve the quality of our life without imposing unnecessary costs and to do so in a way that is efficient, fair, and accountable to the American people.

II. The Objectives of Executive Order No. 12866

Executive Order No. 12866 clearly articulates President Clinton's regulatory philosophy and his view of how the nation's regulatory system should work. Most fundamentally, as the Order states in its opening lines:

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable.

The Order sets out specific goals:

The objectives of this Executive Order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public.

In its first section, Executive Order No. 12866 sets forth the specific philosophy and principles that are to govern regulatory development. This is worth quoting at this point because it so succinctly describes the philosophy that the Order is established to implement:

Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including

potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

Regulatory Principles

The Order then lists 12 principles of regulation (Section 1(b)) that, to the extent permitted by law, agencies are to follow when considering and developing regulating. These principles can be viewed as a series of questions to be raised by the agency, begins with identifying the problem the agency is trying to solve or the situation it is trying to change. How serious is it, compared with other problems the agency faces? What will this proposed regulation do? How sure is the agency that it will do it? Will the proposed regulation have any unintended benefits? Any unintended costs? Create any counterproductive private incentives? Is there any other approach that would achieve the same objective better? Is there a way of modifying the proposed regulation to achieve greater benefits for the same costs or to achieve the same benefits for fewer costs?

Two themes emerge from these principles: the need for data and for analysis, particularly of alternative ways to solve the problem. It is the responsibility of regulators to obtain and rely on the best reasonably obtainable scientific, technical, or economic data, as may be called for in a particular instance. The data should be assembled and analyzed objectively, without preconceived notions of the outcome. At the same time, it is clear that as the state of scientific knowledge advances, technology develops and changes, and economic forecasts are revised, there may be legitimate disputes about what constitutes the best available data. That being the case, the quest for the best should not be the enemy of the practicable.

It is also the responsibility of regulators to be disciplined in analyzing the benefits and costs of proposed regulations and alternative ways of solving the problem, so that they can attest not only that the benefits of their regulations outweigh their costs, but also that their regulations are designed in the most cost-effective manner possible. Such a statement of principle would not seem to be controversial, yet the use of benefit-cost analysis has been one of the most contentious issues in the regulatory arena during the last twelve years.

Those who criticize benefit-cost analyses believe that it is often difficult (or even impossible or morally improper) to quantify or place a dollar value on such benefits as lives saved, improved air quality, or reduced discrimination. Others believe that while it may be difficult to quantify or place a dollar value on certain costs—such as reduced flexibility, the loss of innovation, or counterproductive incentives to cheat—generally costs are easier to measure than benefits, so that undertaking a benefit-cost analysis will, they believe, skew the decision-making process against the adoption of needed regulations.

While there is no easy response to these concerns, the Executive Order stresses not only that the anticipated effects of a regulation should be quantified to the extent possible, but also that those that cannot be quantified—whether they be benefits or costs—should nevertheless be considered. This underscores that the decision-maker should consider all of the anticipated effects in deciding whether, on balance, society as a whole will benefit from the proposed regulatory action.

Responsibilities of the Various Participants

How these objectives are to be incorporated into a regulatory system is the subject of the rest of the Executive Order. It begins by affirming the primacy of the regulatory agencies, the legitimacy of centralized review, and the areas of responsibilities for each.

The process of developing regulations must begin with the agencies to which Congress has assigned statutory regulatory authority and responsibilities. These agencies are the repositories of significant substantive expertise and experience in a particular field. An agency's activities are sometimes driven by statutory mandates; there is also frequently a substantial amount of discretion involved. In either event, it is the agency itself that must be responsible for carefully identifying the problem to be addressed, analyzing the source of the problem (including whether existing regulations or other laws have created, or contributed to, the problem and whether those regulations or other laws can be modified to achieve the regulatory goals more effectively), assessing the importance of that problem, and determining the proper solution to it.

The Order assigns the task of centralized review to OMB's OIRA, which in the words of the Executive Order, is the "repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive Order, and the President's regulatory policies." With such expertise, OIRA's role is to "ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive Order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency." (Section 2(b).)

The Vice President is designated as "the principal advisor to the President on . . . regulatory policy, planning, and review." The Order also names 12 White House regulatory policy "Advisors" who are to assist the President and Vice President in specified tasks. These include: (1) The Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisors (CEA); (3) the Assistant to the President for Economic Policy (NEC); (4) the Assistant to the President for Domestic Policy (DPC); (5) the Assistant to the President for National Security Affairs (NSA); (6) the Assistant to the President for Science and Technology (OSTP); (7) the Assistant to the President for Intergovernmental Affairs (IGA); (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President (OVP); (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy (OEP); and (12) the Administrator of OIRA, who is to "coordinate communications relating to this Executive Order among the agencies, OMB, the other Advisors, and the Office of the Vice President." (Section 2(c).)

Scope of the Executive Order

The scope of the Order is set forth in several different sections. "Regulation" and "regulatory action," the subject of the planning and review provisions of the Order, are defined, as are exemptions from the definitions, such as formal rulemaking, rules pertaining to military or foreign affairs, and rules limited to agency organization, management, and personnel matters. (Section 3(d).) In addition, the OIRA Administrator is given the authority to exempt any other category of regulations. (Section 3(d)(4).) "Regulation" and "regulatory action" are the operative terms used throughout the Order. They are defined to include any regulatory pronouncement, regardless of form, that has, or is expected to lead to a promulgation that has the force and effect of law. Thus, certain guidance documents, directives, notices of inquiry, policy statements, and the like may be included under the

Order depending on the extent to which the agency intends to enforce their terms and conditions.

In general, the Order focusses on "significant regulatory actions," rather than all regulations or regulatory actions. This is an important distinction between this Order and its predecessor, Executive Order No. 12291. This Order makes clear, among other things, that centralized review is to be focussed on the most important regulatory actions, where OIRA's limited resources can be expected to have maximum beneficial effect. Consistent with the spirit of the primacy of agencies for regulatory decisions and the streamlining of the regulatory process, the agencies themselves are solely responsible for review of non-significant regulatory actions.

A significant regulatory action is defined to mean any regulatory action 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 this Executive Order. (Section 3(f).)

The Order applies as a whole to all Federal agencies, with the exception of the independent regulatory agencies. However, the independent regulatory agencies are requested on a voluntary basis to adhere to the statement of regulatory philosophy and the regulatory principles that may be pertinent to their activities. Moreover, these independent agencies are included within the provisions relating to the planning process. (Section 4(b) and Section 4(c).)

Planning and Coordination

The objective of the planning process is to identify significant issues early in the course of regulatory development so that appropriate coordination can be conducted at the beginning of the process rather than at the end. Specifically, the purpose of the planning and coordinating mechanisms set up by the Order is:

[T]o provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive Order. (Section 4.)

First, the Order establishes a planning cycle that begins with a meeting, convened by the Vice President, with the regulatory policy advisors and the heads of agencies to discuss priorities and to coordinate regulatory efforts to be accomplished in the upcoming year (Section 4(a)). The Order recognizes the continued utility of the "Unified Regulatory Agenda," a compilation of "all regulations under development or review," to be published as specified by the Administrator. (Section 4(b).) The Order also calls for agencies to develop a "Regulatory Plan" (Section 4(c)), a description of the "most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter." Agencies' plans are to be submitted to OIRA by June 1st of each year, and are then to be coordinated with various affected agencies and the regulatory policy advisors. After appropriate consultation and coordination, the Plan is to be published annually in the October publication of the Unified Regulatory Agenda.

Another vehicle for increased coordination and cooperation regarding regulatory affairs among agencies and between the Executive Office of the President and the agencies is the Regulatory Working Group (RWG). (Section 4(d).) The RWG—which is to meet at least quarterly—is to be chaired by the OIRA Administrator, and consist of representatives of the regulatory policy advisors and the heads of agencies determined to have significant domestic regulatory responsibility. The Order sets forth specific tasks for the RWG:

To assist agencies in identifying and analyzing important regulatory issues (including among others (1) The development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities.)

In order for agencies to implement the Order's philosophy regarding accountability, planning, and coordination, it is necessary for a very senior official with sufficient authority to be given responsibility for these functions. The Order thus requires each agency to appoint a Regulatory Policy Officer (RPO) (Section 6(a)(2)). The RPO is to report to the agency head and is to oversee in the agency "the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive Order." In most cases, the RPO also serves as the agency's representative on the RWG.

To ensure improved coordination between the Government and the public, the Order also requires the OIRA Administrator to meet quarterly with representatives of State, local, and tribal governments, and to convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern. (Section 4(e).)

Centralized Review Process

A large part of the Order is devoted to the processes for implementing centralized regulatory review (Section 6), including a mechanism for resolving disputes that may result from such review (Section 7). In the most recent Administration, centralized review was highly controversial and vigorously attacked by critics who believed that it had been misused. Yet, few really challenge the notion that it is appropriate for the President to provide an opportunity for an appraisal—detached from the originating agency's legitimate focus on its programmatic goals—as to whether the agency's regulatory activities are consistent with and further the President's overall objectives and regulatory philosophy. Centralized review also provides an effective vehicle for ensuring that decisions made by one agency do not conflict with policies or actions taken or planned by other agencies—an increasingly important function as the decentralized government takes on increasingly complex responsibilities. And centralized review can be helpful in identifying a particular success story, or a particular mistake, by an agency that can provide important information for other agencies facing the same or similar problems.

Some of the problems with the way centralized review has been implemented in the past can be reduced if the agency rule-writers and the reviewer become engaged sooner rather than later in the regulatory process. After an agency has spent years, and substantial intellectual resources in producing a proposed regulation, it is difficult for it to be receptive and responsive to comments questioning the

fundamental premises on which the regulation is based regardless of the merits of those comments. Recognizing the benefits of advance planning and coordination in identifying and more importantly resolving major issues early in the process, Section 6 establishes a process that focusses on selectivity and early determination of what is important, or "significant."

The process begins with the agency submitting to OIRA a list of planned regulatory actions (Section 6(a)(3)(A)), indicating those the agency believes to be "significant regulatory actions", as defined in Section 3(f). OIRA then has ten working days to notify the agency that it has determined that a listed regulation is a "significant regulatory action." Those regulatory actions that both OIRA and the agency agree are not significant are not subject to review. Also, the OIRA Administrator may waive review of any regulatory action designated by the agency as significant.

For regulatory actions designated as significant, the agency is to send the draft rule and an assessment of its costs and benefits to OIRA for review. Additional and more extensive analysis is necessary if the rule is "economically significant." (A regulatory action is economically significant within the meaning of the Executive Order if it appears that it will "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." (Section 3(f)(1).) For an economically significant rule, the agency, unless it is prohibited by law, is to submit with the rule an assessment, including the underlying analysis, of the anticipated benefits, the anticipated costs, and of the costs and benefits of "potentially effective and reasonable feasible alternatives." (Section 6(a)(3)(C).)

Section 6 also seeks to eliminate unwarranted delays in the regulatory review process by establishing deadlines within which OIRA must complete its review. (Section 6(b)(2).) For preliminary regulatory actions prior to a Notice of Proposed Rulemaking, such as a notice of inquiry or advance notice of proposed rulemaking, OIRA must conclude review within 10 working days. For most submissions, OIRA must conclude review within 90 calendar days, except that if OIRA has previously reviewed a submission and there is no material change at its next stage, OIRA must complete its review within 45 days. In some cases extensions of review may be needed. The Order allows the review period to be extended upon written approval of the Director of OMB or at the request of the agency head. Finally, if the OIRA Administrator returns a regulatory action to the agency for further consideration, this action is to be done in writing and is to include an explanation for the return, including the pertinent provision of the Order that is the basis for the return.

Openness: Public Involvement and Disclosure

The Order speaks not only to the relationship between the centralized reviewer and the agencies, but also to the relationship between both of them and the public. It is essential that the public be involved in the rulemaking process those benefitting from, those incidentally affected by, as well as those who might be burdened by, the proposed regulations. The public will often be able to corroborate the information that the agency already has in its possession, or provide additional relevant information to the agency. The public can also provide a useful reality check on the agency's proposal.

While the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*, the agency's organic statute, and the agency's internal rules provide for public input, the Order reflects the fact that more can be done to involve the public in the rulemaking process, particularly in the early stages (before a formal notice of proposed rulemaking is issued). Specifically, the Order requires each agency to "provide the public with meaningful participation in the regulatory process," including "a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days." (Section 6(a)(1).) The Order also encourages agencies "to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking." (Section 6(a)(1).) An open and easily accessible process generally improves the basis for decision-making, increases accountability on the part of the agency, and generally enhances the prospect for acceptance of the final product by the regulated industry.

To increase the openness and accountability of the regulatory review process itself, the Order sets forth certain disclosure responsibilities for both the agencies and OIRA. After a regulatory action has been issued, the agency is to make available to the public the material that the Order requires to have been submitted to OIRA for review. The agency is also to identify for the public the "substantive changes between the draft submitted to OIRA for review and the action subsequently announced," as well as identifying those changes that were made at the suggestion or recommendation of OIRA. (Section 6(a)(3)(E).)

OIRA too is subject to a variety of disclosure procedures. (Section 6(b)(4).) Regarding regulatory actions under review at OIRA, only the OIRA Administrator or a particular designee is to receive oral communications from persons not employed by the Executive Branch. If meetings are held with such persons, OIRA is to invite a representative from the appropriate agency to be present. Within 10 working days OIRA will forward to the agency a copy of all written communications received from persons outside the Executive Branch, as well as the names and dates of individuals involved in substantive oral communications. OIRA is also to maintain a publicly available log that includes a notation of all written communications forwarded to an agency and the dates, names of individuals, and subject matter discussed in substantive oral communications between OIRA and persons outside the Executive Branch. In addition, OIRA will make available the status of all regulatory actions under review. Finally, after publication or issuance of a regulatory action, OIRA will make available all documents exchanged between OIRA and the agency during the review.

The Order also provides a dispute resolution mechanism, in the event that the Administrator of OIRA cannot resolve a disagreement between or among agency heads or between OMB and an agency. (Section 7). In that event, the issue will be decided by the President or the Vice President acting at his behest. Resolution of an issue under this section may be requested only by the Director of OMB, the head of the issuing agency, or the head of an agency with a significant interest in the outcome. Such review will specifically not be undertaken at the request of any other persons.

Review of Existing Regulations

The Order establishes an ongoing process whereby agencies will review existing regulations (Section 5). Agencies were required to submit to OIRA by December 31, 1993, a plan under which the agency will periodically review its existing significant regulations to determine whether any such rules should be modified or eliminated. The Administrator of OIRA is directed to work with the RWG and others, State,

local and tribal governments in particular, to help pursue the review of existing regulations. The general purpose of such review is as follows:

[T]o reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive Order, within applicable law; and to otherwise improve the effectiveness of existing regulations. * * * (Section 5).

III. The Implementation of Executive Order No. 12866

We would prefer to report that all the regulatory problems of the nation have either been resolved or are on their way to being resolved by the 6-month mark of the Executive Order. It should be no surprise, however, that this is not the case. Improving the regulatory system of the nation is tied to reforms that are being undertaken throughout the government, many initiated through the Vice President's National Performance Review. While changes are underway, most are not yet completed; this is true also for implementation of the Executive Order.

Many of the themes that run through the Order, careful planning, cooperation and team work within the Executive Branch, sound and timely analysis, focusing of resources, openness and accountability, are also being instituted across other programs of the Federal Government. In some cases, the ability of agencies to implement changes in the regulatory system depends on changes being made in other areas. For example, planning and priority setting depend on the existence within departments of offices that possess the authority to resist the natural tendency of large agencies to seek autonomy within departments. In other cases, there may be a tension between reform in one area and reform in another. Sound analysis, for example, requires highly skilled personnel and budget resources, at a time when the Federal Government is reducing personnel and constraining budgets.

To some extent, our ability to reform the regulatory process is not wholly within our control. Regulations are often mandated by statutes, most of which attack a single problem without recognition that other problems, possibly more important problems, may be implicated by the proposed solution. Many statutes also create lengthy, often highly detailed regulatory requirements, leaving agencies with little discretion to establish reasonable tradeoffs between requirements, and in some cases driving agencies to scramble in response to the statutory (or, if they miss it, the judicially imposed) deadline of the day.

Nevertheless, we believe that we have made a very good start in implementing Executive Order No. 12866 during its first six months in operation, with many measurable improvements. The OMB Director and OIRA Administrator issued guidance to the heads of agencies regarding implementation of the Order on October 12, 1993, less than two weeks after the Order was signed. Since then, as detailed below, both OIRA and the agencies have been energetic in implementing the Order.

We must point out, however, that the start-up time for various provisions of the Order has taken longer (and in some cases a lot longer) than we anticipated. Many agencies have had to establish new oversight mechanisms to enable them to implement provisions in the Order. For example, the listing of significant and non-significant rules has proven particularly troublesome for some decentralized departments, both in terms of the internal decision-making to determine the "significance" of particular rules, and in terms of clearing those determinations with sister agencies or the Office of the Secretary (or its equivalent).

In addition, several provisions of the Order establish processes that will take time to implement or simply have not been used yet. The regulatory planning process set forth in Section 4 of the Order is on schedule, but only just now beginning. The Vice President convened the Agencies' Policy Meeting (Section 4(a)) on April 5, 1994, and guidance to the agencies on implementation of the Regulatory Plan (Section 4(c)) was issued by the OIRA Administrator immediately after the meeting. Draft Regulatory Plans are not due to OIRA until June 1st, and the first Plan will not be published until October 1994, when it will appear with the semi-annual Regulatory Agenda.

Similarly, the review of existing regulations established by Section 5 contemplated that agencies would submit programs under which they would periodically review their existing significant regulations by December 31, 1993. Several agencies, including DOT, HHS, DOE, and DOI, included as part of their plans public notices soliciting suggestions for regulations to be reviewed. Other approaches to reviewing existing regulations have been discussed within the Regulatory Working Group, and next steps are being developed.

Finally, the provision of the Order that has not yet been implemented because it has not been used is Section 7, Resolution of Conflicts. To date, there have been no disagreements regarding implementation of the Order that have been raised to the President or Vice President for resolution.

To a large extent, the first three months of the Order, October through December 1993 were almost exclusively devoted to start-up, by both OIRA and the agencies. During January through March 1994, the changes created by the Order began to emerge, and now some are clearly visible and measurable. Start-up still goes on, however, and, as will be discussed below, it may simply be too early to tell whether the Order is working as intended.

Cooperation and Coordination

There are a number of ways to analyze and measure the implementation of Executive Order No. 12866. Some of the most important changes that have been made, which nourish the spirit of the Order as much as carrying out its letter, are intangible and difficult to quantify. One of these is the vastly improved relationship that has developed between OIRA and the agencies.

While remnants of the mistrust and hostility that often characterized relationships between the career staffs over much of the past decade still exist, for the most part this has been replaced with a spirit of cooperation. Rule writers and rule reviewers are learning to work together as partners rather than as adversaries. Particularly good working relationships have evolved between OIRA and DOT, DOI, and Education. Substantial changes are evident with DOL and EPA. In all cases, working relationships have improved.

Differences between OMB and the agencies, including significant disagreement on issues, continue as one would expect and as is contemplated by the Order. But these differences, which are largely the product of different perspectives, are functioning for the most part as a constructive, professional tension that leads to improved regulations.

The change toward a spirit of cooperation and teamwork has occurred largely because it has been fostered by strong leadership within the Administration, including that of the President and Vice President

themselves, as well as by agency heads and managers at OMB. The Administrator of OIRA and her staff have visited many of the agencies to meet with the senior regulatory officials and entertain comments or answer questions about the Executive Order. More work needs to be done, however, so the message reaches throughout the agencies. In the end, perhaps the best antidote for any residual hostility will be several working experiences where the career staffs work together through a problem to produce a product that all agree is better for the effort.

Other serious efforts to improve communications, cooperation, and coordination have now been institutionalized.

As required by the Executive Order, each agency has designated a high level Regulatory Policy Officer (RPO) to represent directly the agency head in efforts to implement the Order and improve the regulatory process. (Section 6(a)(2).) Although departments have selected different positions to perform this role, many have designated the general counsel as the RPO. This has ensured high level agency attention to the regulatory process and efforts to reform it.

One of the primary forums for the RPOs to work together to improve the regulatory process is the Regulatory Working Group (RWG). The RWG has met three times, in November, January, and March. These meetings have been well attended by the White House advisors and the RPOs and have served as a convenient forum for discussion of issues related to the implementation of the Order in an organized and collegial manner. The meetings have allowed agencies to share techniques and solutions to common problems, and have allowed White House and agency officials to exchange views as a group on a regular basis.

The RWG has created four sub-groups to consider specific cross-cutting issues that affect all or many regulatory agencies: these include benefit-cost analysis, risk assessment, streamlining the regulatory system, and use of information technology to improve rulemaking. The sub-groups are inclusive and any agency that is interested has been invited to designate staff to participate. These sub-groups have discussed informal work plans and several are in the process of developing materials for consideration by the RWG.

An additional effort to improve working relationships between agencies and OIRA is the Regulatory Training and Exchange Program instituted by OIRA. Agencies have been encouraged to designate career staff who would come to OIRA on a training detail to learn how regulatory review is conducted and to work on RWG matters. The purpose of the program is to provide expertise among the agency career staff in how regulatory review is conducted so that it can be incorporated into the working practices of the agency, as the Executive Order envisions. This program is still in its start-up phase, but OIRA has hosted two trainees, from USDA and DOT. Other exchange program candidates are being sought, and are expected to undergo this training during the summer and fall.

Openness: Public Involvement and Disclosure

Executive Order No. 12866 places special emphasis on increased openness in the rulemaking process, particularly increased public involvement earlier in the regulatory process. Agencies are instructed to "provide the public with meaningful participation in the regulatory process * * * which in most cases should include a comment period of not less than 60 days." In addition, agencies are to "explore, and where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking." (Section 6(a)(1).) Agencies are also encouraged, prior to issuing notices of proposed rulemaking, to seek the involvement of those affected by it, especially State, local, and tribal officials.

It is difficult to know how much advance consultation is taking place. However, with all but a few well justified exceptions, agencies are allowing 60 days for public comment. Regarding regulatory negotiation, on the same day that the President signed the Executive Order, he also signed a memorandum to agency heads further encouraging the use of consensual mechanisms and directing each agency, by December 31, 1993, to identify to OIRA at least one candidate for a regulatory negotiation during the upcoming year, or explain why the use of such a process would not be feasible. Agencies provided these candidates to OIRA on time, or very shortly after the deadline, and many agencies are currently undertaking regulatory negotiations. To assist with the learning process, OIRA joined with the Administrative Conference of the U.S. (ACUS) to sponsor a program for agency officials, which was held on November 29, 1993, on how to do regulatory negotiation, using expertise and materials that ACUS staff have assembled over the past decade.

As noted above, OIRA has its own responsibilities to meet with various affected entities. OIRA has held two conferences with representatives of State, local, and tribal governments one in December 1993, the second in March 1994. The first conference, chaired by the OIRA Administrator and attended by about 100 persons, consisted of three panel discussions: an overview of the regulatory partnership; regulatory burdens and how they may be reduced; and involving all affected entities in regulatory development. The panels and audience consisted of representatives from State, county, town, and tribal governments; academics; association representatives, for example from the National Association of Counties, the National Governors' Association, the National Association of Towns and Townships, the National Association of American Indians, and the Advisory Commission on Intergovernmental Relations; and agency intergovernmental affairs office representatives.

The second conference, also chaired by the OIRA Administrator, was a working session devoted to discussion of consultations between the Federal government and State, local, and tribal officials regarding unfunded nonstatutory mandates. This session brought together at one table general counsels from several major regulatory agencies and various State, local, and tribal governmental officials to discuss how to improve the consultative process called for in Executive Order No. 12875, "Enhancing the Intergovernmental Partnership".

These conferences are the beginning of a significant and continuing effort by this Administration to ensure that more effective working relationships among the Federal, State, local, and tribal governments are institutionalized. A third conference is tentatively scheduled for early June. We have asked representatives of the major State, local, and tribal associations for suggested topics or formats for this and other conferences to be scheduled on a regular basis.

OIRA has also taken steps to improve the participation of the small business community in the rulemaking process. OIRA joined the Small Business Administration (SBA) to sponsor a Small Business Forum on Regulatory Reform in March 1994 to discuss how the regulatory process can better address the special needs of small businesses. The Forum, chaired by the OIRA Administrator and the Administrator of the SBA, brought together high level officials from regulatory agencies that significantly affect small businesses—EPA, DOT, IRS, DOL, DOJ, and FDA—to listen to small business owners

discuss their concerns regarding Federal regulations. This Forum was followed by work session meetings focussed on five industry sectors—chemical and metals; food processing; transportation and trucking; restaurants; and environmental, recycling, and waste disposal—that have been attended by both relevant agency officials and small business representatives. A second conference, to discuss the results of these work sessions, will be scheduled later this summer.

While the regulatory review process conducted by OIRA cannot displace the agencies' responsibilities to seek and accommodate public input in rulemaking, OIRA is charged with conducting its work so as to "ensure greater openness, accessibility, and accountability in the regulatory review process." (Section 6(b)(4).) On July 1, 1993, as one of her first actions, the OIRA Administrator began making available a daily list of draft agency regulations under review at OIRA. This was done in order to remove the stigma of secrecy that had previously characterized regulatory review, and to make the review process more transparent. Now, the fact that a rule is under review at OIRA, or "pending," is public information available to anyone who seeks it.

The completion of review is also made public. On the pending list, the date of completion of review for any regulation pending that month is indicated. Lists and statistics for each month are compiled and made available by the tenth day of the following month. This information includes a list of all rules on which review was concluded the previous month, showing agency, title, an identification number, date received, date review completed, type of rule (e.g., proposal, final, etc.), and OIRA action taken (e.g. found consistent with the Order without change, with change; withdrawn; returned to agency; etc.). In addition, there is a list of all economically significant rules reviewed. Finally, this monthly compilation includes aggregate statistics on reviews for the month and for the calendar year, including the number of reviews by agency, OIRA action taken, and average review time.

As provided for in the Executive Order, meetings and telephone calls with persons outside the Executive Branch on regulations under review are now logged, and these logs are made publicly available. Entries for meetings include the date, the attendees, and the subject matter discussed. An agency representative is invited and almost always attends such meetings. Any written materials provided by the outside person(s) are made publicly available, and, if an agency representative is not in attendance, are provided to the agency.

The OIRA meetings log contains 36 entries, for meetings that occurred between July 19, 1993, and March 31, 1994. In all but two, the OIRA Administrator chaired the meetings; in these two, other officials in the Executive Office of the President acted as chair. An agency representative attended all but four meetings. Usually the meetings were with persons outside the Federal Government, but in several instances the attendees included Congressional representatives. Most of the meetings were devoted to EPA regulations, 30 of the 36. The other meetings concerned a DOC/NOAA rule and several FDA and USDA food safety regulatory actions.

Any material sent to OIRA on rules being reviewed from anyone outside the Executive Branch is kept in a public file. In addition, if the material is not merely a copy of documents already sent to the agency, a copy is forwarded to the agency. Finally, documents exchanged between OIRA and the agency during the review, including the draft rule submitted for review and changed pages, are made available to anyone requesting them after the rule has been issued (or, if it is not issued, after the agency has announced its decision not to issue the rule).

These various disclosure procedures are working well and have helped restore the integrity of the regulatory review process. Communications with outsiders are controlled and disclosed, but apparently this has not had the result of discouraging such communications. Also, the results of the review process itself are disclosed, making OIRA clearly accountable for its actions.

Regulatory Review Statistics

The statistics maintained by OIRA of the regulatory review process provide another means of measuring the implementation of the Executive Order. Indeed, these statistics respond directly to most of the questions raised in the President's September 30, 1993, memorandum to the OIRA Administrator. In this memorandum, he directed the Administrator:

To monitor your review activities over the next six months and, at the end of this period, to prepare a report on your activities. This report shall include a list of the regulatory actions reviewed by OIRA, specifying the issuing agency; the nature of the regulatory action * * *; whether the agency or OIRA identified the reviewed regulatory action as "significant," within the meaning of the order; and the time dedicated to the review, including whether there were any extensions of the time periods set forth in the order, and if so, the reason for such extensions.

OIRA received and reviewed 578 regulatory actions from October 1, 1993, through March 31, 1994. Appendix A lists these rules, indicating the originating department and/or agency, the review time in days, the nature of the regulatory action (e.g., Proposed Rule, Final Rule, etc.), the rules designated significant by the agency and those designated by OIRA, the rules for which review was extended, and the title of the rule. Table 1 summarizes information about these rules by agency, including the number of rules and average review time for rules in the "economically significant" and "other than economically significant" categories. It also indicates the OIRA action taken by agency.[1]

Table 1 indicates that of the 578 rules reviewed, 63 (11%) were economically significant (or "major," a term from Executive Order 12291 that continued to be used until about the beginning of January). The average review time for all the rules was 26 days, well below the 90-day limit established by Executive Order No. 12866. The 10 agencies with the highest volume of submissions were, in order: HHS (126), USDA (94), EPA (52), DOT (44), DOC (42), DOI (34), Education (25), HUD (25), VA (21), and OPM (17). For about 60% of the submissions, review was completed without change to the rule. In 30% of the cases, review was completed with change. 4.5% of the rules were withdrawn by the agency; 2% were returned because they were sent improperly; in about 3% of the cases, mostly EPA rules, review was not concluded but was ended because of a statutory or judicial deadline.

These statistics are affected by the fact (discussed later) that during the start-up period, during which many non-significant rules continued to be sent to OIRA for review. Once the process is fully implemented and agencies submit

[1] On October 1, 1993, OIRA also had 175 rules under review that had been submitted under Executive Order 12291. Table 2 summarizes the data on these rules. On average, these rules were reviewed in 76 days. Review was concluded on the last of these pre-Executive Order No. 12866 rules on 1/13/94.

Also, on March 31st, 68 rules that had been submitted between October 1st and March 31st were still under review. Table 3 summarizes the pertinent data on these rules. 45 rules (or 66%), had been under review for under 30 days; 66 (or 97%, had been under review less than 90 days. Three (or 3%), had been under review over 90 days, and had been extended.

only significant rules to OIRA for review, the total number of rules is likely to decrease, as will the percentage of rules for which review is concluded without change. At the same time, as only the more important rules become the focus of OIRA's review, average review time is likely to increase. We will be watching these indicators closely during the coming year.

Of the 578 individual rules listed in Appendix A, three rules were extended beyond the 90-day limit, all at the request of the agency to permit interagency coordination to be completed. Regarding the designation of rules as "significant," the list indicates which rules were designated significant by the agency, and which were designated significant by OMB. Of the 578 rules reviewed, a total of 238 or 41% were designated significant in accordance with Section 6(a)(3)(A). Of those designated significant, 166 or 70% were so designated by the agency, while 72 or 30% were designated significant by OMB.

Listing Process

As Appendix A indicates, many of the rules reviewed were not designated either "significant" or "not significant." This is because virtually all agencies needed the first two to three months of the Order for start-up activities, and did not have in place their listing processes until the second half of the six-month period under review. The process was smoother for agencies that either already had or created offices to perform the central management function necessary for the listing process to succeed. DOT, for example, has had in place for many years a central regulatory review office in its Office of the General Counsel, whose function is to coordinate and review the DOT sub-agencies' rulemaking on behalf of the Secretary. In other instances, offices have been established to perform these functions by Clinton appointees. The Secretary of the Department of the Interior, for example, created an Office of Regulatory Affairs whose director reports to the Secretary and Chief of Staff and whose job it is to organize, monitor, and manage the Department's rulemaking activities. The Department of Education also addressed the need for centralized responsibility, assigning this function to its General Counsel, who brought on board a Deputy specifically charged with regulatory responsibilities. These agencies have done an excellent job instituting the listing procedures.

In other instances, however, it has proven difficult to create a centralized, departmental function capable of: collecting information from agencies within the department on the status of regulations; coordinating a departmental decision on significance; and managing the submission of the result to OMB and the discussion with OMB to reach agreement on the proper designation. Even now, after six months of experience, some agencies have still been unable to submit a single list to OIRA designating rules as significant or non-significant. These agencies generally continue to submit all rules to OMB for review, telling us that it is easier and quicker for them to do so than to go through the process of designating rules as significant or non-significant even though they know that the majority of their rules are non-significant and would therefore not need to be reviewed.

These agencies are examples where internal agency coordination needs to be improved. OIRA does not want to review non-significant rules; more importantly, it is only when agencies are able to designate rules as non-significant well in advance that the benefits of this system in streamlining the regulatory processes will be realized. In the meantime, OIRA is working with agencies to process all the rules that are submitted, accommodating as much as possible the difficulties agencies are experiencing starting up their systems.

OIRA initially envisioned that agencies would send lists designating rules significant or non-significant every 30 or 60 days. It is now clear that for some agencies, lists may be needed more often; for others, less often; and for some, at irregular intervals. The process should remain informal and flexible to respond to differences among the agencies and to changing circumstances within some agencies. For example, DOC's National Marine Fisheries Service must sometimes modify Federal fishery management plans on only several weeks, and indeed sometimes on several days, notice. Speed in the listing process is therefore critical. Also, in some instances, agencies have preferred to submit informal drafts of lists to OMB so that discussions can take place and additional information be exchanged before the lists are finalized. We do not want to discourage any opportunities for early exchanges of information, and therefore it has worked with the agencies to sort through the various informal lists they are able to provide.

In total, OIRA has received lists designating 1,624 rules as significant or non-significant. (These rules would not all be listed in Appendix A because, if non-significant, they would not have been submitted for review, and if significant, they may or may not have been ready to be submitted for review within the six-month period covered by this report.) Of the 1,624 regulatory actions, agencies designated, and OIRA agreed, that 1047, or 64% were non-significant; 316, or 19% were designated by the agency as, and OIRA agreed they were, significant; and the remaining 261, or 16%, were designated significant by OIRA. Stated another way, the agency and OIRA agreed with the initial designation for 83% of the cases; in only 16% was there a difference of view.

These aggregate data mask the fact that for most agencies the number of instances where there is an initial difference of opinion between the agency and OIRA as to significance decreases as the agency gains experience with the process. In some cases it is simply a function of the agencies not knowing how much information to provide to enable OIRA to agree with the agency designation. In all cases, differences have diminished with time as the agencies and OMB discuss the reasons for the different perspectives and develop an understanding and agreement on the definition of significance.

OIRA's experience implementing this listing provision of the Executive Order has provided some valuable lessons. In some cases, the difficulties described above are symptomatic of agency processes that are broken and need to be fixed. But it is also true that the Executive Branch is characterized by great variety in agency structures, cultures, statutory mandates, and missions. As a consequence, the Executive Order must be flexible enough to accommodate such variety and not seek to impose rigid constraints that may be counterproductive.

We believe that so far, the listing system that has been implemented contains both discipline and flexibility. Both OIRA staff and agency staff have worked to accommodate each other's needs. The listing process is serving to focus OIRA efforts on significant rules, promote streamlining in the rulemaking process, and establish accountability in agencies, without creating unnecessary and burdensome additional structures.

Selectivity

One of the purposes of the Executive Order was to reduce the number of rules submitted to OIRA for review, thereby streamlining the rulemaking process for the agencies and allowing OIRA to focus its limited resources on the more important rules. The start-up issues discussed above have clouded to some extent a clear measure of the changes that have occurred in regulatory review since the Executive Order was signed.

Nevertheless, the intended reduction in the number of rules reviewed under the Order is clearly demonstrated in the statistics.

Part of the reduction is attributable to the implementation of OIRA's authority to exempt both specific agencies and categories of regulations from centralized review. In guidance issued to agencies on October 12, 1993, the OIRA Administrator exempted 31 smaller agencies and 35 categories of regulation so that OIRA review could be more usefully focussed. (Lists of these exemptions are included with the October 12, 1993, guidance from the OMB Director and OIRA Administrator on implementation of the Order, attached. These lists have been updated to exempt four additional agencies and approximately 30 additional categories of regulations.)

Overall, the 578 rules received and reviewed by OIRA for the six-month period is approximately half what it was in previous years. Figure A indicates the clear decline in the number of rules OIRA received for review, compared to the average monthly receipts for the preceding nine months of 1993 (which is comparable to that of previous years). The number of rules received for OIRA review decreased from an average of about 180 per month from January through September 1993 (the monthly average for the years 1989 through 1992 was 192), to well under 100 for January through March 1994. (Monthly figures will vary depending on regulatory activity at agencies. Figure A shows a steady decline from October 1993 through February 1994 and an increase for March. April's figures are between those of February and March.)

The number of rules under review at any given time has also shown a significant decline. On July 1, 1993, when OIRA began its disclosure of rules under review, 254 regulations were listed as pending. On September 30, when the President signed Executive Order No. 12866, 175 regulatory actions were pending review at OIRA. On March 31, 1993, 68 regulatory actions were pending. All these figures re-emphasize the obvious, that OIRA is reviewing far fewer rules than in the past, exactly as envisioned by the Executive Order.

Time Limits

The Executive Order establishes strict time limits on OIRA review, in most cases 90 days. The purpose of such limits is to balance the need for adequate time to conduct review with the need to streamline the regulatory process and prevent unwarranted delay. OIRA has made a concerted effort to meet not only the letter of this requirement, but its spirit as well, and this goal of the Order is clearly being accomplished.

As can be seen from both Table I and Appendix A, the average review times for the rules submitted during the first six months of the Order is only 26 days. This is a reduction in the average annual review time for the past five years: 1989—29 days; 1990—28 days; 1991—29 days; 1992—39 days; 1993—44 days. (The average times were particularly high during 1992 and 1993 because of, respectively, the Regulatory Moratorium instituted by President Bush and the effect of the transition to the Clinton Administration, when many agencies were without political appointees for a significant portion of 1993.)

Notwithstanding OIRA's commitment to speed up the review process, it is likely that the average review time will go up in the future. As non-significant rules, which in the past had generally been reviewed quickly and thus helped keep average review times down, are removed from the review process, and only significant rules submitted and reviewed by OIRA, the time necessary to complete such review may increase. To some extent, however, average review time is no longer as useful a measure as it was when there were no meaningful limits on review. Since all rules, except the small percentage specifically extended, must be reviewed within 90 days, it is compliance with that deadline that is most important and is therefore discussed in detail below. Nevertheless, average review time will continue to be a measure carefully watched by OIRA in the coming year.

A quick look at Appendix A reveals that most reviews were completed in under 30 days. This may be as a result of OIRA's still receiving non-significant rules, or its receiving some rules on the eve of statutory or judicial deadlines, or because OIRA and agency staffs have consulted earlier in the process and few issues remain by the time for formal submission. Of the 578, 408 or 71% were reviewed in under 30 days. 512 or 89% were reviewed in under 60 days. Review took greater than 60 days for only 66 or 11% of the 578. The OIRA Administrator has instituted an internal management system that flags for her attention all rules still under review at their 60th day. This has ensured that submissions do not languish on staff desks, but are raised to the appropriate level well before the 90th day.

Appendix A and Table I also show how review times compare across different agencies. For some agencies, the review time is skewed because of lengthy reviews of only a small number of rules. For example, the average time for review for OMB of 108 days was for a single rule, which was extended. NSF's average of 84 days was for three rules; FFIEC's average of 70 days was for a single rule. For the higher volume regulatory agencies, review time averages ranged from 15 days for DOT's 44 rules to 40 days for VA's 21 rules. Others fall in between: HHS—27 days (for 126 rules); USDA—19 days (for 94 rules); EPA—35 days (for 52 rules); DOC—16 days (for 42 rules); DOI—23 days (for 34 rules); Ed—29 days (for 25 rules); HUD—33 days (for 25 rules); OPM—19 days (for 17 rules).

The Order permits the time for review to be extended at the request of the agency head, or by the Director of OMB for 30 days. Appendix A indicates that of the 578 rules received and reviewed between October and March, only three were extended. These were: DOI's Wild Bird Conservation Act rule, which was under review for 107 days; OMB's Cost Accounting Standards Board Regulations, under review for 108 days; and DOD's Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) rule, under review for 99 days. Each of these rules was extended at the request of the originating agency. Wild Birds was extended to permit the completion of interagency coordination between DOI, DOJ, State and USTR. Cost Accounting Standards was extended to allow OIRA staff to meet with the Cost Accounting Standards Board at the Board's request. DOD's CHAMPUS rule was extended to ensure coordination of the rule with the regulatory programs of other health care agencies. In all these cases, extension was used to permit completion of reviews that were in fact concluded in less than three weeks after the extension was requested.

As of March 31st, two additional rules had been extended and were still under review: USDA's Revisions of Farmland Protection Policy Act (received November 9, 1993), and EPA's Lender Liability for Underground Storage Tanks (received December 20, 1993). Also, nine rules that were submitted before the Executive Order was signed, but for which review was concluded after October 1, 1993, were extended after they had been under review for 90 days in an effort to comply with the spirit of the new Order.[2]

[2] These rules were: USDA's Export Bonus Program (review concluded 12/7/93); DOD's Prompt Payment Act (review concluded 12/16/93); DOC's Natural Resource Damage Assessment rule (review concluded 12/23/93); HHS's Payment of Preadmission Service, Medicare Program (review

Continued

Overall, OIRA's experience during the first six months with the review time limits show them to be working well.

IV. Issues for Further Consideration

In his September 30, 1993, memorandum, the President requested that the Administrator of OIRA "identify any provisions of the order that, based on your experience or on comments from interested persons, warrant reconsideration . . . ." There are a number of provisions that qualify, although it is too early to say whether the problems lie with the terms of the Executive Order, with its implementation, or some combination of the two. As discussed above, in many cases start-up activities implementing certain provisions of the Order are still in progress. The process of listing rules as significant or non-significant, for example, while well underway at most agencies is nevertheless still in its formative stages at many other agencies. As a result, we are not now able to judge the effectiveness of this approach in achieving the objectives of the Order.

By the same token, we do not know if agencies are giving to non-significant regulatory actions the review and care that they deserve. It was anticipated that, because there would be no OIRA review, agencies themselves would have to ensure that non-significant rules, as well as significant regulations, meet the principles of the Order. Some agencies have told OIRA that they are fulfilling this responsibility. OIRA has no independent basis for confirming or denying these reports. With time, however, there should be sufficient information to enable informed judgment on the issue. With time, OIRA should also be able to better evaluate the effects of earlier communication between OIRA and agency staffs and more selective review to ensure that significant regulations adhere to the principles of the Order. And, as noted above, additional time is needed to evaluate the planning process and the process for review of existing regulations.

While it is premature to recommend specific revisions to the Executive Order, we have enough experience to suggest some areas that are likely to require further consideration.

Review Time Limits

One such issue is the 90-day review time limit (Section 6(b)(2)(B).) In general, we have found the discipline of this limit useful and fair. Along with the disclosure procedures, the time limits have helped remove the stigma of secrecy and delay that have characterized regulatory review in the past. As shown in Appendix A, only a small percentage of the rules submitted for review are extended.

There are two types of situations, however, where the balance between adequate review and the limits on review time is problematic. First, OIRA's experience is that interagency coordination can sometimes be unexpectedly lengthy. In the case of the USDA Farmland Protection rule, for example, coordination among multiple agencies, in this case USDA, DOT, HUD, Treasury, and GSA, has required the resolution of significant issues at the highest levels in major regulatory departments. As a practical matter, it takes time to arrange meetings, define and analyze issues, circulate and coordinate exchanges between the agencies, and negotiate solutions. It has proven extremely difficult to keep this process moving to resolution.

The second situation is where the agency and OIRA agree that additional analysis is necessary to meet the requirements of the Order. In some instances, where issues are highly technical—legally, mechanically, or economically—such analysis can take months to complete. If this is the case, the rule is technically still under review at OIRA, although in fact no review can be conducted—either by OIRA or the agency—until the further data and analysis are generated. In such cases, the time limits on review serve to discourage rather than encourage efforts to develop the most effective, minimally burdensome regulation.

The current mechanism to deal with such circumstances is the provision for extension of review by either the Director or the agency head. (Section 6(b)(2)(C).) While this provision has functioned to keep some rules under review that might otherwise have been returned to the agency, it gives the misleading impression that OIRA is reviewing the rule when in fact the originating agency, or an affected agency, is engaged in further analysis or coordination or even in some cases simply making changes that have already been agreed to in principle by policymakers.

There is another area where the 90-day limit may not be appropriate—namely, an economically significant regulatory action, which may have taken several years to develop to the proposed stage and which arrives at OIRA with several hundred pages of detailed analysis. Even if the OIRA and agency staffs have conferred during the developmental stages, it is very difficult to review all of the materials presented, and particularly to consider not only what is presented, but also what is not (which often is equally, if not more, important), within the 90-day limit under the best of circumstances (e.g., no intervening statutory or judicial deadlines or agency requests for expedited consideration of high priority agency initiatives).

At the other extreme are those instances where review is triggered by section 3(f)(4)—that is, a rule raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order. Here, if there has been advance consultation as there should be, and other agencies are not affected, OIRA may need very little, if any, time to conclude review.

By contrast, OIRA is often given a few days for review—even though substantially more time is necessary—because there is an imminent statutory and/or judicial deadline. Some agencies, notably EPA, but also HHS, DOL, DOI and others, often must develop regulations under severe time constraints set in statutes or arising from litigation resulting from missed statutory deadlines. In such cases, the discretion of the agency is often severely limited, both in terms of time to conduct adequate analysis and discretion to devise flexible, innovative, and cost-effective solutions to difficult problems. In some of these cases, OIRA has received rules for review only days before a deadline; in fact, in some cases, the agency managers themselves have only a few days to deal with deadline cases.

While this is a serious problem, it may be beyond our ability to remedy through the Executive Order. It is our view that highly prescriptive legislation, including dictating time lines for promulgating regulations, has contributed to a regulatory system that is sometimes unmanageable or is driven by plaintiffs rather than by a rational planning process that directs the government's limited resources to the most important problems and the most cost-effective solutions. However, the solution, if there is one, clearly invites the Legislative Branch and extends beyond the issues covered in this report.

A different problem, but one related to review time limits, is the question of when the clock should start. OIRA has

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concluded 12/23/93); HHS's Revisions to Freedom of Information Regulations, Medicare and Medicaid (withdrawn 12/09/93); HHS's Medicare Coverage and Payment of Clinical Psychologists (review concluded 12/15/93); HHS's Medicare Secondary Payment (review concluded 1/13/94); DOE's Amendment to Workplace Substance Abuse Programs (review concluded 12/3/93); and DOE's Workplace Substance Abuse Programs at DOE Sites (review concluded 12/3/93).

encouraged agencies to consult early in the development of a regulatory action. This brings the perspectives of both the reviewer and the agency to bear on the rule early in the process, informing the regulatory development and permitting early identification and resolution of any major policy differences. Adequate front-end involvement is especially important when statutory or judicial deadlines dictate a rapid pace in the development of the rule. The starting of the clock with the submission of a relatively complete formal draft does not encourage such advance consultation. On the other hand, some have expressed concern that with such advance consultation, the measurement of review time beginning with the submission of a relatively formal draft does not accurately state (indeed, may substantially understate) the time that OIRA has in fact spent reviewing (in some sense) the regulatory action.

Definition of "Significant"

Another area where further monitoring and additional thought is warranted involves the term "significant," which is the trigger for determining whether or not there will be OIRA review. The definition of "significant" is not, apparently, self-executing, and argument over its meaning has been at least partly responsible for the long start-up time in implementing the listing process. In some cases, debate takes place within the agency as to whether or not a rule is significant. In some of those same cases, and in others, the debate takes place between OMB and the agency, typically with OMB thinking that a regulatory action which the agency initially thinks is non-significant is, in OMB's view, significant.

To some extent these debates are part of the initial adjustment period as the Order is implemented; some reflect residual mistrust from the previous regulatory review system; and, some reflect the natural tension between the agency responsible for the regulation and a reviewing entity. But some may reflect the lack of precision (deliberate at the time of drafting) in the definition set forth in the Executive Order.

The uncertainty centers in particular around two of the four criteria that define "significant regulatory action"—the first and the fourth. The first criterion defines what has become known as an "economically significant" rule. (Section 3(f)(1).) Although the initial clause of the criterion—a $100 million annual effect on the economy—is clear, the remainder is not as easily understood. What does it mean to "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"? Similarly, looking at the fourth criterion, what are "novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order"? Some have read it very narrowly; others have read it to include everything. While it is too early to suggest specific changes to the definition, we will be monitoring it to see if further clarification is required.

Identification of Changes Made During Review

Another area that may warrant further consideration are sections 6(a)(3)(E) (ii) and (iii), which require the agency to identify the substantive changes made in a regulatory action during OIRA review, and to identify those changes made at the suggestion or recommendation of OIRA. These provisions are intended to make the results of OIRA review transparent to the public. Some agencies have told us they are identifying such changes, and while we have not conducted a survey, we have no reason to think that all are not complying with the terms of the Order.

From our perspective, however, changes that result from regulatory review are the product of collegial discussions, involving not only OIRA and the agency, but frequently other White House Offices—such as OVP, DPC, NEC, CEA, OEP, OSTP—and other agencies as well (including at times, other sister agencies in the same department as the originating agency). After an extended process, it is not clear that identifying changes made at the suggestion of OIRA is accurate (if the only choice is OIRA suggestions or agency proposals) or meaningful (if OIRA suggestions are only those suggestions originating at OIRA rather than at another agency). We expect to explore this subject with the agencies and see if any further guidance is necessary or desirable.

Intergovernmental Relations

There are two areas that are touched on in the Executive Order where perhaps more should be done. The first involves Executive Order No. 12875. It provides, among other things, that Federal agencies that impose nonstatutory, unfunded mandates on State, local, or tribal government either: (1) assure that funds necessary to pay the costs of compliance are provided by the Federal Government, or (2) describe the extent of the agency's prior consultations with affected units of government, the nature of their concerns, any written submissions from them, and the agency's position supporting the need to issue the regulation containing the mandate. The purpose of this provision is, in part, to improve communications between the agencies and State, local, and tribal officials, particularly those responsible for funding the programs, and to establish a meaningful working relationship between them where none may now exist. This is very much a part of the philosophy of Executive Order No. 12866, and OMB has provided guidance to the agencies that regulatory actions that contain an unfunded mandate should be submitted to OIRA for review under Executive Order No. 12866. Further clarification of OIRA's role in this regard could be considered.

Small Business Concerns

The second area involves the burdens of regulation on small businesses. Concerns voiced by the small business community have led to a variety of proposals to increase the focus of regulators on the unique problems of small businesses, and in particular the agencies' compliance (or lack of compliance) with the Regulatory Flexibility Act. 5 U.S.C. 601. One suggestion is to have OIRA and the Small Business Administration (SBA) coordinate review of agency rules to assure that the agencies prepare and use high quality regulatory flexibility analyses when it would be appropriate to do so. SBA could notify OIRA of any concerns it has with an agency's regulatory flexibility analysis within a certain time after publication (e.g., 20 days) of a notice of proposed rulemaking, and OIRA could be authorized to direct the agency to issue a supplemental notice raising regulatory flexibility analysis concerns or announcing the intent to prepare a regulatory flexibility analysis by a date certain. Other forms of collaboration are also possible to encourage better interagency coordination and compliance with existing law.

Post Hoc Evaluation of Rules

Finally, regulations are developed based on estimates of behavior and events in the future. Even the best of such predictions can turn out to be wrong. After a regulation has been issued, however, there is little, if any, effort made to review estimates and analyses to see what was right and what was wrong, both to change the current rule to make it more effective and to learn how to do better analyses for future rules. Agencies with increasingly

limited staffs and new mandates to meet have little incentive for such exercises, although they could be critical to an efficient and effective rulemaking program.

It is possible that the appropriate incentives could be provided by requiring, at least in selected cases, that agencies manage their regulations toward results. That is, a rule could be written with specific goals, initial baselines against which to measure achievement of these goals, and an evaluation plan, including comment by affected parties with an expectation that based on such input and analysis the rule would be modified to improve its effectiveness and efficiency. If so, review of an existing regulation would become part of its development rather than an after-the-fact exercise.

Conclusion

The importance of regulations in our society makes it imperative that the process by which they are developed and reviewed be characterized by integrity and accountability. Regrettably, this Administration did not inherit such a process from the prior Administration. On the contrary, that process was severely criticized for delay, uncertainty, favoritism, and secrecy. Significant improvements have been made with the implementation of Executive Order No. 12866. While it is still too early to judge the effects of the new Order, the regulatory process has been made more principled, professional, and productive. The Executive Office of the President is working in concert with the agencies and listening to the public in order to solve problems, not pretending they do not exist.

The American people deserve a regulatory system that improves their health, safety, and economic well-being without imposing unacceptable or unreasonable costs on society. The regulatory system being established by Executive Order No. 12866 demands quality, efficiency, and accountability, and is well on its way to improving the functioning of government, the economy and, most importantly, the quality of life for the American people.

List of Attachments

1. Executive Order No. 12866 (This Executive Order does not appear in this document. See 58 FR 51735; October 4, 1993).
2. Presidential Memorandum for the Administrator of OIRA dated September 30, 1993. (This Presidential memorandum does not appear in this document. Copies are available from the EOP Publications Office at 202–395–7332.)
3. Guidance from the Administrator of OIRA for Implementing E.O. 12866.
4. Appendix A—Executive Order 12866 Reviews October 1, 1993–March 31, 1994; Received Since October 1, 1993
5. Table 1—Executive Order Reviews October 1, 1993–March 31, 1994; Received After October 1, 1993
6. Table 2—Executive Order Reviews October 1, 1993–March 31, 1994; Received Prior to October 1, 1993
7. Table 3—Executive Order Reviews Pending on April 1, 1994
8. Figure A—Executive Order 12866 Receipts From Agencies

October 12, 1993.

Memorandum for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies

From: Sally Katzen, Administrator, Office of Information and Regulatory Affairs
Subject: Guidance for Implementing E.O. 12866

The President issued Executive Order No. 12866, "Regulatory Planning and Review," on September 30, 1993 (58 Fed. Reg. 51735 (October 4, 1993)).[1] It calls upon Federal agencies and the Office of Information and Regulatory Affairs (OIRA) to carry out specific actions designed to streamline and make more efficient the regulatory process. This memorandum provides guidance on a number of the provisions of the new Order. Undoubtedly, with experience, additional questions will be raised, and we will attempt to respond promptly as they arise.

1. Coverage

The Order as a whole applies to all Federal agencies, with the exception of the independent regulatory agencies (Sec. 3(b)). The independent regulatory agencies are included in provisions concerning the "Unified Regulatory Agenda" (Sec. 4(b)) and "The Regulatory Plan" (Sec. 4(c)). However, while the President's "Statement of Regulatory Philosophy and Principles" (Sec. 1) applies by its terms only to those agencies that are not independent, the independent regulatory agencies are requested on a voluntary basis to adhere to the provisions that may be pertinent to their activities.

In addition, the Order states that the OIRA Administrator may exempt agencies otherwise covered by the Order. Appendix A is a first cut of those agencies that have few, if any, significant rulemaking proceedings each year; effective immediately, these agencies are exempt from the scope of the Order.[2] Like the independent agencies, those agencies listed in Appendix A are requested to adhere voluntarily to the relevant provisions of the Order, particularly the President's "Statement of Regulatory Philosophy and Principles" (Sec. 1).

2. Designation of Regulatory Policy Officer

The Order directs each agency head to designate a Regulatory Policy Officer "who shall report to the agency head" (Sec. 6(a)(2)). This Regulatory Policy Officer is to be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations. Because the Regulatory Policy Officer will in most circumstances serve as the agency representative to the Regulatory Working Group (see below), please provide us with the name, mailing address, and telephone and fax numbers of your designee as soon as possible.

3. Regulatory Working Group

The Order directs the OIRA Administrator to convene a Regulatory Working Group consisting, in part, of the representatives of the heads of each agency having significant domestic regulatory responsibility (Sec. 4(d)).

Again, we have made a first cut of a list of those agencies which should be members of the Regulatory Working Group, which is attached as Appendix B. Some of the Departments that have separate regulatory components may qualify for multiple representatives. Please notify us if you believe that your Department should have more than one representative. In suggesting additional representatives, please identify these persons and provide us with their mailing addresses, and telephone and fax numbers.

The Administrator is to convene the first meeting of the Regulatory Working Group within 30 days. It is therefore essential that we have your response as soon as possible.

4. Regulatory Planning Mechanism

The Order emphasizes planning as a way of identifying significant issues early in the process so that whatever coordination or collaboration is appropriate can be achieved at the beginning of the regulatory development process rather than at the end (Sec. 4).

[1] This Order replaces E.O. 12291 and E.O. 12498.

[2] To assure that the purposes of the Executive Order are carried out, we may ask these agencies to review particular significant regulatory actions of which we become aware. These Agencies should advise OIRA if they believe that a particular rule warrants centralized review.

There are two specific planning documents discussed in the Order. The first, the semiannual Unified Regulatory Agenda (Sec. 4(b)), is on schedule and will be published before the end of October. Traditionally, all agencies participate, describing briefly the regulations under development. The Order does not call for any change in either the scope or format of this document.

The second planning document is the annual Regulatory Plan (Sec. 4(c)), which is to be published in October as part of the Unified Regulatory Agenda. The Regulatory Plan seeks to capture the most important significant regulations. In advance of agencies drafting their Regulatory Plans, the Vice President will meet with agency heads to seek a common understanding of regulatory priorities and to coordinate regulatory efforts to be accomplished in the upcoming year (Sec. 4(a)). The Vice President will convene the first meeting in early 1994. Following that meeting, we will provide appropriate guidance on the scope and structure of the submissions for the 1994 Regulatory Plan.

As you may recall, OMB had asked in OMB Bulletin No. 93–13 (May 13, 1993) that certain agencies prepare a draft 1993 Regulatory Program under the then applicable Executive Order No. 12498. Many agencies sent in some or all of their proposed programs. Other agencies informed us that they wanted to wait for the confirmation of political appointees or the issuance of the new Executive Order. While there is now insufficient time for all of the steps necessary to prepare a formal regulatory plan for this year, the materials we have received will be useful in preparing for the meeting with the Vice President and our other coordination efforts. Those agencies that have already drafted but not submitted materials, as well as those who wish to augment what we have already received, are encouraged to send these materials to OIRA.

5. Review of Existing Regulations

The Order directs each agency to create a program under which it will periodically review its existing significant regulations to determine whether any should be modified or eliminated to make the agency's regulatory program more effective, less burdensome, and in greater alignment with the President's priorities and regulatory principles (Sec. 5). Specifically, within 90 days, agencies are to submit to the OIRA Administrator a program establishing, consistent with the agency's resources and regulatory priorities, the procedures for carrying out a periodic review of existing significant regulations and identifying any legislative mandates that may merit enactment, amendment, or rescission (Sec. 5(a)).

We are aware that past Administrations have required agencies to undertake similar review efforts. Some of these have been so broad in scope that necessary analytic focus has been diffused, or needed follow-up has not occurred. This current effort should be more productive because it focuses only on significant regulations and the legislation that mandates them, and because we will be looking at groups of regulations across agencies with the help of the Vice President and the White House Regulatory Advisers, as well as the public.

Pursuant to the Order, we are asking each agency to send to the OIRA Administrator within 90 days a work-plan which identifies who and which office within the agency will be responsible for assuring that periodic reviews take place; the criteria to be used for selecting targets of review; the kinds of public involvement, data collection, economic and other analysis, and follow-up evaluation that are planned; the timetables to be applied; and, to the extent then known, the targets selected. As the program is implemented and an agency selects specific targets for review, please identify the specific programs, regulations, and legislation involved. To the extent they are relevant, we will share with you the review efforts of other agencies.

6. Centralized Review of Regulations

One of the themes in the Order is greater selectivity in the regulations reviewed by OIRA, so that we can free up our resources to focus on the important regulatory actions and expedite the issuance of those that are less important. Another theme is that we are to determine early in the process which regulations are important (the term in the Order is—"significant"). Among other things, this will permit agencies to conduct the needed analyses for these regulations as part of the development process, not as an after-the-fact exercise (Sec. 6(a)(3)(B)).

The Order defines "significant" regulatory actions" as those likely to lead to a rule (1) having an annual effect on the economy of $100 million or more or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impact of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues (Sec. 3(f)).[3] This definition is not wholly susceptible to mechanical application; rather, in many instances, it will require the exercise of judgment. We will work with the agencies to come to a consensus on the meaning of this term in the context of the specific programs and characteristics of each agency.

To begin, we ask the appropriate personnel at each agency to work with the OIRA desk officer(s) to develop an appropriate list of rulemakings that are under development for submission to OIRA. For each rulemaking, please use the format below:

DEPARTMENT/REGULATORY COMPONENT. Title: ([Indicate significance[4]]; Upcoming Action: [Identify][5]) Planned Submission/ Publication: [date]; RIN: [number[6]]. Statutory/Judicial Deadline: [date, if any].

[Describe briefly what the agency is intending to do and why, including whether the program is new or continuing and, if continuing, the significant changes in program operations or award criteria. Briefly describe issues associated with the rulemaking, as appropriate, e.g., impacts (both benefits and costs), interagency and intergovernmental (State and local) effects, budgetary effects (e.g., outlays, number of years and awards,

[3] The Order is intended to cover any policy document of general applicability and future effect, which the agency intends to have the force and effect of law, such as guidances, funding notices, manuals, implementation strategies, or other public announcements, designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency Such documents are normally published in the **Federal Register**, but can also be made available to the affected public directly.

[4] State one of the following: "Not Significant", "Significant", or "Economically Significant". A designation as "Economically Significant" means that the regulatory action is likely to result in the effects listed in the first subsection—namely, i.e., "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." A regulatory action that is considered "Economically Significant" must ultimately be supported by the analyses set forth in Section 6(a)(3)(C).

[5] Indicate whether the upcoming regulatory action is a "Notice of Inquiry", "Funding Notice", "ANPRM", "NPRM", "Interim Final Rule", "Final Rule", or what other action it may be.

[6] "RIN" is the Regulation Identifier Number published in the Unified Regulatory Agenda. If a RIN has not been assigned, the agency should obtain one through the normal process by contacting the Regulatory Information Service Center.

administrative overhead), time pressures, and why the regulatory action is important, sensitive, controversial or precedential. For final regulatory actions, include a brief statement of the nature and extent of public comment, and the nature and extent of changes made in response to the public comments.] ([Name and telephone number of program official who can answer detailed questions])

We are not looking for a lengthy or detailed description of the issues listed above. All we need is information sufficient to confirm the characterization of "significant" or "not significant". Similarly, for final regulatory actions, the description of the public comments and changes is simply to enable us to decide whether we can expedite or waive our review of the final rule where, for example, there are few or no public comments and little or no substantive change from the previously reviewed NPRM.

Under the Executive Order, within 10 working days after OIRA receives this list, we will meet with or call your office to discuss whether or not listed regulatory actions should be submitted for centralized review (Sec. 6(a)(3)(A)). The purpose of this meeting is to confirm the characterization of the proposal as "significant" or "not significant," the characterization is important because, absent a material change in the development of the rule, those characterized as "not significant" need *not* be submitted for OIRA review before publication.

OIRA will also want to discuss the timing for updates that would identify any new regulatory actions under development. OIRA implemented this procedure with several agencies on a pilot basis while the Order was being drafted. We are most pleased by the results. It has in some instances taken one or two tries to develop a process that works for a particular agency. In most instances, submission of a list once a month has proven sufficient for our purposes.

Once it is clear that a rulemaking warrants review by OIRA, the process will be facilitated by your advising the OIRA staff as soon as possible on the basic concept, direction, and scope of the rulemaking. This will enable us to identify early the issues that we are concerned about and to inform agency personnel of the type of analyses that OIRA will look for when it reviews the regulatory action. All of this is designed to make the review process more efficient and avoid last minute problems.

When an agency submits a significant regulatory action for review, the Order sets forth certain information that each agency should provide a description of the need for the regulatory action, how the regulation will meet that need, and an assessment of the potential costs and benefits of the regulatory action, together with an explanation of how it is consistent with a statutory mandate, promotes the President's priorities, and avoids undue interference with State, local, and tribal governments. This should not impose additional burden on the agency. All of the information should have been prepared as part of the agency's deliberative process; and much, if not all, of this information should already be set forth in the preamble of the proposal so as to allow more informed public comment.

If the regulatory action is economically significant (as defined in Sec. 3(f)(1)),[7] the Order sets forth additional information that an agency must provide—an assessment of benefits, costs, and of potentially effective and reasonably feasible alternatives to the planned regulatory action (Sec. 6(a)(3(C)). We recognize that this material may take different forms for different agencies. We are reviewing our current guidance to see what changes, if any, are appropriate. Pending the conclusion of this review, agencies should continue to adhere to the existing OMB guidance on how to estimate benefits and costs.

In order to assure that the public is aware of our review under the Order and the possible effects that this review may have had, agencies should indicate in the preamble to the regulatory action whether or not the regulatory action was subject to review under E.O. 12866. On the other hand, there is no requirement that an agency document (in the preamble or in its submissions to OIRA) compliance with each principle of regulation set forth in the beginning of the Executive Order (Sec. 1(b)); we do, however, expect agencies to adhere to these principles and to respond to any questions that may be raised about how a regulatory action is consistent with these provisions of the Order.

The OIRA Administrator was given the authority to exempt any category of agency regulations from centralized review (Sec. 3(d)(4)). To begin with, we have decided that the previously granted exemptions should be kept in effect, except as the Order specifically includes them.[8] Several additional exemptions have been added as a result of our ongoing discussions with agencies. A list of current exemptions is set forth in Appendix C. We will add to this list as experience warrants. We urge you to contact the Administrator, or have your staff contact your OIRA desk officer, to discuss those categories you believe may be suitable for exemption.

7. Openness and Public Accountability

To assure greater openness and accountability in the regulatory review process, the Order sets forth certain responsibilities for OIRA (Sec. 6(b)(4)). Among other things, OIRA is placing in its public reading room a list of all agency regulatory actions currently undergoing review. This list is updated daily, and identifies each regulatory action by agency, title, date received, and date review is completed.

The reading room also contains a list of all meetings and telephone conversations with the public and Congress to discuss the substance of draft regulations that OIRA is reviewing. Within OIRA, only the Administrator (or an individual specifically designated by the Administrator—generally the Deputy Administrator) may receive such oral communications.

When these meetings are scheduled, we are asking those outside the Executive branch to have communicated their concerns and supporting facts to the issuing agency before the meeting with OIRA. To assure that the matters discussed are known to the agency, we are inviting policy-level officials from the issuing agency to each such meeting.

In addition, written materials received from those outside the Executive branch will be logged in the reading room and forwarded to the issuing agency within 10 working days. It will be up to each agency to put these in its rulemaking docket.

After the regulation is published, OIRA is making available to the public the documents exchanged between OIRA and the issuing agency. These materials will also be made public even if the agency decides not to publish the regulatory action in the **Federal Register**. In addition, the Order directs that, after a regulatory action has been published in the **Federal Register** or otherwise released, each agency is to make available to the public the text submitted for review, and the required assessments and analyses (Sec. 6(a)(3)(E)). In addition, after the regulatory action has been published in the **Federal Register** or otherwise issued

[7] See footnote 4.

[8] Section 3(d)(2) includes within the definition of "regulation" or "rule" those pertaining to "procurement" and the "import or export of non-defense articles and services." The OIRA Administrator interprets the latter to include within the scope of the Order the regulations of the Bureau of Export Administration, and to exclude State Department regulations involving the Munitions List.

to the public, each agency is to identify for the public, in a complete, clear, and simple manner, the substantive changes that it made to the regulatory action between the time the draft was submitted to OIRA for review and the action was subsequently publicly announced, indicating those changes that were made at the suggestion or recommendation of OIRA (Sec. 6(a)(3)(E) (ii) and (iii)). Should you have any questions about these matters, please call the Administrator or one of your OIRA Desk Officers.

8. Time Limits for OIRA Review

The Order sets forth strict time limits for OIRA review of regulatory actions. For any notices of inquiry, advance notice of proposed rulemaking, or other preliminary regulatory action, OIRA is to complete review within 10 working days (Sec. 6(b)(2)(A)). For all other regulatory actions, OIRA has 90 calendar days, unless OIRA has previously reviewed it and there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case there is a limit of 45 days (Sec. 6(b)(2)(B)). Because of these tight time limits, we must work closely together to ensure that requests for clarification or information are responded to promptly. Upon receipt of a regulatory action, we plan to take a quick look and make certain that whatever analyses should be included are included, and to get back promptly to the agency to ask for whatever is missing.

In some instances, a reason for OIRA review will be the potential effect of a regulation on other agencies. In these circumstances, OIRA will attempt to provide the affected agencies with copies of the draft regulatory action as soon as possible. If you are aware that another an agency has an interest in the draft regulatory action, please let us know quickly.

We also want to stress the provision in the Order that calls upon each agency, in emergency situations or when the agency is obligated by law to act more quickly than normal review procedures allow, to notify OIRA as soon as possible and to schedule the rulemaking proceedings so as to permit sufficient time for OIRA to conduct an adequate review (Sec. 6(a)(3)(D)).

9. Regulation Identifier Number (RIN)

We ask that each agency include a Regulation Identifier Number in the heading of each regulatory action published in the **Federal Register**.[9] This will make it easier for the public and agency officials to track the publication history of regulatory actions throughout their life cycles and to link documents in the **Federal Register** with corresponding entries in the Unified Agenda of Federal Regulations (Sec. 4(b)) and the Regulatory Plan (Sec. 4(c)).

* * * * *

We look forward to working with you to implement this Executive Order. If you have any questions, please let us know. We will, of course, provide additional guidance as experience and need dictate.

Appendix A—Agencies Exempt From E.O. 12866

Advisory Council on Historic Preservation
African Development Foundation
Alaska Natural Gas Transportation System, Office of the Federal Inspector
American Battle Monuments Commission
Arms Control and Disarmament Agency
Board for International Broadcasting
Central Intelligence Agency
Commission of Fine Arts
Committee for Purchase from the Blind and Severely Handicapped
Export-Import Bank of the United States
Farm Credit System Assistance Board
Federal Financial Institutions Examination Council
Federal Mediation and Conciliation Service
Harry S. Truman Scholarship Foundation
Institute of Museum Services
Inter-American Foundation
International Development Corporation Agency
James Madison Memorial Fellowship Foundation
Merit Systems Protection Board
Navajo Hopi Indian Relocation Commission
National Capital Planning Commission
Office of Special Counsel
Overseas Private Investment Corporation
Panama Canal Commission
Pennsylvania Avenue Development Corporation
Peace Corps
Selective Service System
Tennessee Valley Authority
United States Metric Board
United States Information Agency
United States International Development Cooperation Agency

Appendix B—Members of the Regulatory Working Group

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Department of the Treasury
Department of Veterans Affairs
Environmental Protection Agency
Small Business Administration
General Services Administration
Equal Employment Opportunity Commission

Appendix C—Regulatory Actions Exempted From Centralized Regulatory Review

Department of Agriculture

Food and Nutrition Service—Special Nutrition program notices that revise reimbursement rates and eligibility criteria for the School Lunch, Child Care Food, and other nutrition programs.

Food and Nutrition Service—Food Stamp program notices that set eligibility criteria and deduction policies.

Agricultural Marketing Service—Regulations that establish voluntary standards for grading the quality of food.

Animal and Plant Health Inspection Service—Rules and notices concerning quarantine actions and related measures to prevent the spread of animal and plant pests and diseases.

Animal and Plant Health Inspection Service—Rules affirming actions taken on an emergency basis if no adverse comments were received.

Rural Electrification Administration—Rules concerning standards and specifications for construction and materials.

Department of Commerce

National Oceanic and Atmospheric Administration—Certain time-sensitive preseason and in season Fishery Management Plan regulatory actions that set restrictions on fishing seasons, catch size, and fishing gear.

Department of Education

Certain Final Rules Based on Proposed Rules—Final regulations based on proposed regulations that OMB previously reviewed where: (1) OMB had not previously identified issues for review in a final regulation stage; (2) Education received no substantive public comment; and (3) the

[9] The Office of the **Federal Register** has issued guidance to agencies on the placement of the RIN number in their documents. See Document Drafting Handbook, 1991 ed., p. 9.

proposed regulation is not substantively revised in the final regulation.

Rules Directly Implementing Statute—Final regulations that only incorporate statutory language with no interpretation.

Notices of Final Funding Priorities—Notices of final funding priorities for which OMB has previously reviewed the proposed priority.

Department of Energy

Power Marketing Administrations—Regulations issued by various power administrations relating to the sale of electrical power that they produce or market.

Department of Health and Human Services

Food and Drug Administration—Agency notices of funds availability.

Food and Drug Administration—Medical device reclassifications to less stringent categories.

Food and Drug Administration—OTC monographs, unless they may be precedent-setting or have large adverse impacts on consumers.

Food and Drug Administration—Final rules for which no comments were received and which do not differ from the NPRM.

Department of the Interior

Office of Surface Mining—Actions to approve, or conditionally approve, State regulatory mining actions or amendments to such actions.

Office of Surface Mining—Approval of State mining reclamation plans or amendments.

Office of Surface Mining—Cooperative agreements between OSM and States.

United States Fish and Wildlife Service—Certain parts of the annual migratory bird hunting regulations.

Department of Transportation

All Office of DOT—Amendments that postpone the compliance dates of regulations already in effect.

Coast Guard—Regatta regulations, safety zone regulations, and security zone regulations.

Coast Guard—Anchorage, drawbridge operations, and inland waterways navigation regulations.

Coast Guard—Regulations specifying amount of separation required between cargoes containing incompatible chemicals.

Federal Aviation Administration—Standard instrument approach procedure regulations, en route altitude regulations, routine air space actions, and airworthiness directives.

National Highway Traffic Safety Administration—Federal Motor Vehicle Safety Standard 109 table of tire sizes.

Department of the Treasury

Internal Revenue Service, Bureau of Alcohol, Tobacco, and Firearms, and Customs Service—Revenue rulings and procedures, Customs decisions, legal determinations, and other similar ruling documents. Major legislative regulations are covered fully.

Environmental Protection Agency

Office of Pesticides and Toxic Substances—Actions regarding pesticide tolerances, temporary tolerances, tolerance exemptions, and food additives regulations, except those that make an existing tolerance more stringent.

Office of Pesticides and Toxic Substances—Unconditional approvals of TSCA section 5 test marketing exemptions, and of experimental use permits under FIFRA.

Office of Pesticides and Toxic Substances—Decision documents defining and establishing registration standards; decision documents and termination decisions for the RPAR process; and data call-in requests made under section 3(c)(2)(B) of FIFRA.

Office of Air, Noise, and Radiation—Rules that unconditionally approve revisions to State Implementation Plans.

Office of Air, Noise, and Radiation—Unconditional approvals of equivalent methods for ambient air quality monitoring and of NSPS, NESHAPS, and PSD delegations to States; approvals of carbon monoxide and nitrogen oxide waivers; area designations of air quality planning purposes; and deletions from the NSPS source categories list.

Office of Water—Unconditional approvals of State Water Standards.

Office of Water—Unconditional approval of State underground injection control programs, delegations of NPDES authority to States; deletions from the 307(a) list of toxic pollutants; and suspension of Toxic Testing Requirements under NPDES.

Office of Solid Water and Emergency Response—Unconditional approvals of State authorization under RCRA of State solid waste management plans and of hazardous waste delisting petitions under RCRA.

Pension Benefit Guaranty Corporation

Interest Rates—Changes in interest rates on later premium payments and delinquent employer liability payments under sections 6601 and 6621 of the Internal Revenue Code as amended by the Tax Equity and Fiscal Responsibility Act of 1982.

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Appendix A

EXECUTIVE ORDER 12866 REVIEWS
OCTOBER 1, 1993 -- MARCH 31, 1994
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	* SIGNIFICANCE	TITLE
UNITED STATES DEPARTMENT OF AGRICULTURE				
USDA-AgSEC	10	Final Rule	1	Rural empowerment zones and enterprise community regulations -- 7 CFR part 25
USDA-AgGC	7	Proposed Rule		Rules of practice governing formal adjudicatory proceedings -- 7 CFR parts 0, 1, 47, 50, 51, 52, 53, 54 and 180 and 9 CFR part 202
USDA-CSRS	5	Final Rule		Biotechnology risk assessment research grants program administrative provisions
USDA-FAS	32	Final Rule		Cooperative agreements for the development of foreign markets for agricultural commodities -- 7 CFR part 1485
USDA-FAS	38	Proposed Rule		Tobacco exports requirements (advance notice of proposed rulemaking)
USDA-ASCS	11	Final Rule		Poundage quota regulations and marketing assessments for the 1994 and 1995 crops of peanuts
USDA-ASCS	11	Final Rule		Oilseed prevailing world price calculations, loan origination fees, and final loan maturity date -- 7 CFR parts 1421 and 1474, Workplan No. 93-005
USDA-ASCS	24	Final Rule	1	Price support loan requirements, farmer-owned reserve program eligibility requirements -- Workplan No. 93-004
USDA-ASCS	64	Proposed Rule	2	Conservation and environmental programs regulation regarding the water quality incentives program, cost-share provisions of the emergency conservation program
USDA-ASCS	1	Final Rule		Amendments to the regulations governing reductions in the price of milk received by producers required by the Omnibus Budget Reconciliation Act of 1993
USDA-ASCS	11	Proposed Rule		1994 crop peanut national poundage quota and the minimum CCC export edible sales price for additional peanuts
USDA-ASCS	28	Final Rule		Selection and functions of agricultural stabilization and conservation state and county community committees
USDA-ASCS	11	Proposed Rule		Cotton marketing system, notice requesting comments
USDA-ASCS	5	Final Rule		1993 specifications for cotton bale packaging materials -- Workplan No. 93-019
USDA-ASCS	11	Proposed Rule		Non-emergency haying and grazing on conservation reserve program grasslands -- Workplan No. ASCS 93-029
USDA-ASCS	87	Final Rule	2	Malting barley assessment
USDA-ASCS	3	Proposed Rule		1994-crop national marketing quotas for six kinds of tobacco -- Workplan No. 92-045
USDA-ASCS	31	Proposed Rule	1	Wetlands reserve program -- 7 CFR part 703, Workplan No. ASCS 93-032
USDA-ASCS	14	Proposed Rule	1	Domestic marketing assessment -- Workplan No. 93-033
USDA-ASCS	8	Final Rule	1	Support prices for shorn wool, wool on unshorn lambs, and mohair for the 1993 marketing year
USDA-ASCS	70	Final Rule	2	Debt settlement policies and procedures -- 7 CFR part 792, Workplan No. 92-030
USDA-ASCS	15	Interim Final Rule		1994-crop national peanut poundage quota -- Workplan No. 92-041
USDA-ASCS	13	Final Rule	2	Emergency livestock assistance -- 7 CFR part 1475
USDA-ASCS	8	Proposed Rule		Revisions to the upland cotton user marketing certificate program -- Workplan No. 94-014
USDA-ASCS	21	Final Rule (N/C)		Using electronic cotton warehouse receipts, amendment to the U.S. Warehouse Act -- Workplan No. 92-048
USDA-FCIC	6	Final Rule		Late planting option and the prevented planting endorsement, general crop insurance regulations -- 7 CFR part 401
USDA-FCIC	43	Final Rule		Sugar beets -- 7 CFR part 430
USDA-FCIC	43	Final Rule		Mutual consent cancellation, general administrative regulation -- 7 CFR part 400
USDA-FCIC	3	Final Rule		Late and prevented planting for various crop endorsements, general crop insurance regulations
USDA-FCIC	3	Final Rule		Late and prevented planting for hybrid seed, general crop insurance regulations
USDA-REA	38	Proposed Rule		Pre-loan policies and procedures for electric loans
USDA-REA	11	Final Rule		Rural telephone bank and telephone program loan policies, design criteria, construction policies, and standards and specifications for materials, equipment ...
USDA-REA	11	Final Rule		Pre-loan policies and procedures for electric loans
USDA-FmHA	8	Final Rule		Housing application packaging grants -- 7 CFR part 1944-b
USDA-FmHA	36	Final Rule	2	Receiving and processing applications for farmer programs loans
USDA-FmHA	24	Proposed Rule		Revisions to the direct emergency loan instructions to implement administrative decisions pertaining to the applicant loan eligibility calculation and appraisal
USDA-FmHA	10	Proposed Rule		Removal of the prohibition against charging interest on interest on FmHA guaranteed loans
USDA-FmHA	3	Final Rule (N/C)		Revisions to the direct emergency loan instructions to implement administrative decisions pertaining to the applicant loan eligibility calculation, appraisals,
USDA-SCS	10	Final Rule		Emergency wetlands reserve program
USDA-APHIS	13	Proposed Rule		Importation of restricted articles, Port Everglades, FL -- APHIS Docket No. 93-029-1, OBP&A Workplan No. 93-019
USDA-APHIS	58	Proposed Rule		Garbage, inspection at airports -- APHIS Docket No. 93-038-1
USDA-APHIS	7	Final Rule		Ports designated for the exportation of animals, Kentucky and New Jersey -- APHIS Docket .o. 93-016-3, OBP&A Workplan No. 93-011
USDA-APHIS	7	Proposed Rule		Ruminants and horses imported from Canada, importation of wild ruminants and swine -- APHIS Docket No. 92-129-1, OBP&A Workplan No. 92-057

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USDA-APHIS	7	Final Rule		Imported fire ant -- APHIS Docket No. 93-082-1
USDA-APHIS	12	Proposed Rule		Rules of practice
USDA-APHIS	3	Proposed Rule		Importation of pork and pork products from countries where swine vesicular disease is known to exist -- APHIS Docket No. 93-102-1
USDA-APHIS	4	Proposed Rule		Ports designated for the exportation of animals -- APHIS Docket No. 93-106-1, OBP&A Workplan No. 93-051
USDA-APHIS	4	Proposed Rule		Scrapie: sheep and goats less than 1 year of age moved to slaughter -- APHIS Docket No. 93-050-1, OBP&A Workplan No. 93-029
USDA-APHIS	38	Final Rule		Garbage, compliance agreements -- APHIS Docket No. 91-017-2, OBP&A Workplan No. 91-005
USDA-APHIS	2	Final Rule		Importation of monterey pine logs and douglas-fir logs from New Zealand -- APHIS Docket No. 91-074-5, OBP&A Workplan No. 92-032
USDA-APHIS	2	Final Rule	1	User fees, agricultural quarantine and inspection services -- APHIS Docket No. 92-148-2, OBP&A Workplan No. 92-069
USDA-APHIS	2	Final Rule		Commuted traveltime periods -- APHIS Docket No. 93-123-1
USDA-APHIS	4	Final Rule		Mediterranean fruit fly, addition to the quarantined areas, treatments
USDA-APHIS	5	Final Rule		User fees, import- and export-related veterinary services -- APHIS Docket No. 92-042-2, OBP&A Workplan No. 92-023
USDA-APHIS	27	Proposed Rule	1	Importation of logs, lumber, and other unmanufactured wood products -- APHIS Docket No. 91-074-3, OBP&A Workplan No. 92-032
USDA-FGIS	9	Proposed Rule		United States standards for flax seed, mixed grain, oats, rye, sunflower seed, and tritcale
USDA-FGIS	14	Final Rule		United States standards for rice
USDA-FGIS	10	Proposed Rule	2	Fees for official pesticide residue testing
USDA-AMS	14	Final Rule		Egg products inspection, increase in fees and charges -- PY-93-003
USDA-AMS	13	Proposed Rule	2	Grading and inspection, general specifications for approved plants and standards for grades of dairy products, proposed fee increase
USDA-AMS	10	Final Rule		Soybean promotion and research program, procedures for conduct of referenda
USDA-AMS	12	Final Rule	2	Increase testing fees for inspection and certification of quality of agricultural and vegetable seeds under the Agricultural Marketing Act of 1946
USDA-AMS	12	Final Rule		Soybean promotion and research, rules and regulations -- 7 CFR part 1220
USDA-AMS	5	Final Rule	2	Changes in fees for Federal meat grading and certification services
USDA-AMS	2	Proposed Rule		Amendment to egg research and promotion rules and regulations -- PY-93-004
USDA-AMS	36	Final Rule	2	Revision of user fees, grading and inspection, general specifications for approved plants and standards for grades of dairy products
USDA-AMS	6	Proposed Rule		Realignment of districts, watermelon research and promotion plan, rules and regulations
USDA-AMS	5	Proposed Rule		Dairy promotion program, amendments to the order
USDA-AMS	6	Proposed Rule		Revision of fees for fresh fruit and vegetable destination market grading services
USDA-FSIS	0	Final Rule	1	Mandatory safe handling statements on labeling of raw meat and poultry products
USDA-FSIS	1	Final Rule	1	Mandatory safe handling statements on labeling of raw meat and poultry products -- 9 CFR parts 317 and 381, Docket No. 93-012f-1
USDA-FSIS	1	Proposed Rule	1	Mandatory safe handling statements on labeling of raw meat and poultry products -- 9 CFR parts 317 and 381, Docket No. 93-026p
USDA-FSIS	28	Final Rule		Accreditation fees, standards, and procedures for FSIS accredited laboratories
USDA-FSIS	5	Proposed Rule		Sodium Citrate as a tripe denuding agent
USDA-FSIS	5	Proposed Rule		Use of Trisodium Phosphate on raw, chilled poultry carcasses
USDA-FSIS	39	Final Rule	1	Nutrition labeling of meat and poultry products, technical amendments -- 9 CFR parts 317 and 381, Docket No. 91-006f-ta
USDA-FSIS	39	Proposed Rule	1	Nutrition labeling of meat and poultry products, technical amendments -- 9 CFR parts 317 and 381, Docket No. 93-022p
USDA-FSIS	39	Proposed Rule	1	Placement of nutrition labeling and other mandatory labeling on meat and poultry products
USDA-FSIS	1	Prerule	1	Poultry products produced by mechanical deboning and products in which such poultry products are used
USDA-FSIS	1	Proposed Rule	1	Meat produced by advanced meat/bone separation machinery and meat recovery systems
USDA-FSIS	19	Final Rule	1	Mandatory safe handling statements on labeling of raw and partially cooked meat and poultry products
USDA-FNS	68	Final Rule	2	Special supplemental food program for women, infants, and children (WIC), coordination rule
USDA-FNS	56	Final Rule	2	Maximum allotments for Alaska, Hawaii, Guam, and the Virgin Islands
USDA-FNS	56	Final Rule		Administrative improvement and simplification provisions from the Hunger Prevention Act of 1988
USDA-FNS	34	Final Rule		Definition of food and nutrition service -- 7 CFR parts 253 and 254
USDA-FNS	59	Final Rule	2	Maximum allotments for the 48 states and D.C. and income eligibility standards and deductions for the 48 states, D.C., Alaska, Hawaii, Guam, and the Virgin Islands
USDA-FNS	57	Final Rule		Recommendations for improvements to Food Stamp/SSI joint processing
USDA-FNS	6	Proposed Rule		Consideration of an alternate protein source, whey protein concentrate, as a meat alternate for use in the child nutrition programs
USDA-FNS	65	Final Rule	2	Performance standards for the employment and training program, Food Stamp Program

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USDA-FS	21	Final Rule		National forest system notice, comment, and appeal procedures
USDA-FS	34	Proposed Rule		Hells Canyon private land use regulations -- 36 CFR 292, subpart e
USDA-FS	1	Proposed Rule		Grazing fees on national forest system lands
USDA-FS	2	Proposed Rule		Grazing fees on national forest system lands
USDA-FS	24	Proposed Rule	2	Prohibition -- 36 CFR part 261, law enforcement support activities -- 36 CFR part 262
DEPARTMENT OF COMMERCE				
DOC-EDA	67	Final Rule		Property managment standards
DOC-ITA	26	Proposed Rule		Watch duty-exemption program
DOC-USTTA	8	Final Rule		Notice of availability of financial assistance for projects to support tourism trade development in midwest states affected by the widespread flooding of 1993
DOC-NOAA	4	Proposed Rule		Reef fishery resources of the Gulf of Mexico, amendment 5, management measures including 3 SMZs
DOC-NOAA	0	Proposed Rule		The taking of marine mammals incidental to underwater detonation of explosives in the outer sea test range, Pt. Mugu, California
DOC-NOAA	9	Final Rule		Groundfish of the Gulf of Alaska, Groundfish fishery of the Bering Sea and Aleutian Islands
DOC-NOAA	9	Proposed Rule		Groundfish of the Gulf of Alaska, Groundfish fishery of the Bering Sea and Aleutian Islands area
DOC-NOAA	23	Proposed Rule		Observer coverage of the Groundfish fisheries in the Gulf of Alaska and the Bering Sea and Aleutian Islands management area
DOC-NOAA	1	Final Rule		Fishery management plan for the Shrimp fishery for the South Atlantic region
DOC-NOAA	5	Proposed Rule		Reef fish resources of the Gulf of Mexico, management measures to enhance enforcement and data collection -- amendment 7
DOC-NOAA	1	Final Rule		Coastal Migratory Pelagic resources of the Gulf of Mexico and South Atlantic, trip limits for gulf group King Mackerel in each of two sub-zones
DOC-NOAA	1	Proposed Rule		Defining the term as it pertains to fish import regulations under the Marine Mammal Protection Act
DOC-NOAA	7	Proposed Rule		Improve finfish excluder device requirement in the Northern Shrimp fishery under the fishery management plan for the northeast multispecies fishery
DOC-NOAA	3	Proposed Rule		Allow importers or brokers to file using the U.S. customer service's automated broker interface system
DOC-NOAA	20	Final Rule		Establish procedures for the National Weather Service to follow in certifying when NSW field offices are closed, relocated, or automated
DOC-NOAA	8	Final Rule		Prohibition of explosive devices and establishment of a procedure for permitting fishing operations to experiment with new equipment
DOC-NOAA	22	Proposed Rule		Groundfish of the Bering Sea and Aleutian Islands area require increased observer coverage and improved equipment for measuring groundfish total catches
DOC-NOAA	22	Final Rule		Notice of availability of financial assistance, FY 94 Marfin projects
DOC-NOAA	27	Proposed Rule	1	Northeast multispecies fishery plan -- amendment 5
DOC-NOAA	18	Proposed Rule		Atlantic swordfish fishery: voluntary pilot program to allow retention of undersized swordfish for donation to charity
DOC-NOAA	18	Final Rule		Pelagic fisheries of the Western Pacific -- the Hawaii-based longline fishery mandatory observer program
DOC-NOAA	16	Final Rule	1	Designating critical habitat for listed Snake River Salmon
DOC-NOAA	6	Final Rule		Summer flounder fishery -- amendment 5
DOC-PTO	3	Final Rule	2	Revision of trademark fees
DOC-NTIA	25	Notice	1	Notice of availability, TIIAP of funds
DOC-NIST	12	Proposed Rule		Fips 71: advanced data communication control procedures (ADCCP)
DOC-NIST	7	Final Rule		Standard reference data grants and cooperative agreements, program announcement
DOC-NIST	11	Final Rule		Precision measurement grants
DOC-NIST	8	Final Rule		Materials science and engineering grants program
DOC-NIST	22	Proposed Rule		Fips: open document architecture (ODA) raster document application profile (dap) -- solicitation of comments
DOC-NIST	4	Proposed Rule		Fips: for portable operating system interface (POSIX), part 2 - shell and utilities
DOC-NIST	13	Proposed Rule	2	Fips: security label for the Government open systems interconnection profile -- second solicitation of comments
DOC-NIST	20	Proposed Rule	2	Fips 140-1: security requirements, notice of proposed validation requirements for products
DOC-NIST	8	Final Rule	2	Fips: approval of the escrowed encryption standard

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DOC-BXA	6	Final Rule			Country group Q: addition of Bulgaria, Latvia, and Mongolia, expansion of favorable consideration treatment and implementation of import certificate/delivery...
DOC-BXA	34	Final Rule			Revisions to the export administration regulations, clarifications
DOC-BXA	0	Final Rule			Foreign availability and general license GFW eligibility for certain oil well perforators controlled by ECCN 1c18a.o
DOC-BXA	60	Final Rule			Elimination of the certification requirements for general license GLR and transfers of technology to foreign nationals in the U.S., revisions to the export administration
DOC-BXA	1	Final Rule			Digital computers: removal of national security-based validated license requirements for
DOC-BXA	50	Final Rule			Computers: increase in supercomputer threshold level to a CTP of 1,500 mtops, expansion of general license GFW eligibility for
DOC-BXA	0	Final Rule			Foreign availability assessment determination of synchronous digital hierarchy (SDH) telecommunications transmission equipment
DOC-BXA	1	Interim Final Rule			Commerce control list, items controlled for nuclear nonproliferation reasons
DEPARTMENT OF DEFENSE					
DOD-DODOAS	26	Final Rule			CHAMPUS: specialized treatment services, non-availability statements, peer review organization program
DOD-DODOAS	99	Final Rule		Ext	CHAMPUS: screening mammography and papanicolaou (PAP) tests, certified marriage and family counselors coverage, etc.
DOD-DODOAS	57	Proposed Rule			CHAMPUS: hospital payments for ambulatory care
DOD-DODOAS	21	Final Rule			CHAMPUS: uniform HMO benefit
DOD-DODOAS	64	Proposed Rule			CHAMPUS: tricare enrollment program, special health care program
DOD-OS	22	Proposed Rule			Defense Logistics Agency privacy program -- Defense Logistics Agency regulation 5400.2
DOD-OS	58	Final Rule			National Security Agency security protective force
DOD-OS	5	Interim Final Rule	1		Revitalizing base closure communities and community assistance
EDUCATION DEPARTMENT					
ED-EDOGC	11	Final Rule	1		Final policy statement under Administrative Dispute Resolution Act
ED-OESE	55	Proposed Rule	2		Priorities for training program in early childhood education and violence counseling
ED-OESE	8	Proposed Rule	1		Chapter 1 program in local educational agencies, Chapter 1 Migrant Education Program
ED-OSERS	21	Notice	2		Notice of proposed priorities for fiscal years 1994-1995 for the Knowledge Dissemination and Utilization Program
ED-OVAE	27	Final Rule	2		State-administered Workplace Literacy Program, National Workplace Literacy Program
ED-OPE	41	Final Rule	2		Graduate assistance in areas of national need
ED-OPE	84	Proposed Rule	1		Federal Pell Grant Program and Presidential Access Scholarship Program
ED-OPE	34	Proposed Rule	1		State postsecondary review program
ED-OPE	81	Proposed Rule	2		Federal Family Education Loan Program, Federal Stafford Loan Forgiveness Demonstration Program
ED-OPE	87	Proposed Rule	1		Federal Family Education Loan Program
ED-OPE	57	Proposed Rule	1		The National Early Intevention Scholarship and Partnership Program
ED-OPE	21	Proposed Rule	1		Federal Family Education Loan Program loan cancellation and wage garnishment
ED-OPE	0	Final Rule	1		Reporting and recordkeeping requirements for the direct loans program, final standards, criteria, and procedures
ED-OPE	1	Proposed Rule	1		Secretary's procedures and criteria for recognition of accrediting agencies
ED-OPE	1	Proposed Rule	1		State Postsecondary Review Program
ED-OPE	17	Proposed Rule	1		Institutional eligibility under the Higher Education Act of 1965, as amended
ED-OPE	62	Proposed Rule	1		Federal Family Education Loan Program repayment schedules, deferments, and forbearances
ED-OPE	5	Proposed Rule	2		Federal Family Education Loan Program, loan forgiveness demonstration program
ED-OPE	1	Proposed Rule	1		Federal Pell Grant Program and Presidential Access Scholarship Program
ED-OPE	34	Final Rule	2		Student assistance general provisions, student eligibility amendments
ED-OPE	6	Proposed Rule	1		Student assistance general provisions, Federal Pell Grant Program -- subparts a and b
ED-OPE	1	Notice	1		Notice of standards for participation and solicitation of applications

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ED-OERI	0	Notice	2	Notice of proposed priorities for model projects in encouraging female & minority students in mathematics & science & for model science-based professional ...
ED-EDMAN	8	Proposed Rule	1	State-administered programs and Federal, state, and local partnership for educational improvement
ED-EDMAN	1	Proposed Rule	2	Education Department general ao. ınstrative regulations (EDGAR) -- 34 CFR parts 75 and 76
DEPARTMENT OF ENERGY				
DOE-ENDEP	88	Final Rule		Nuclear safety management
DOE-ENDEP	78	Proposed Rule	1	Energy conservation standards for eight types of appliances
DOE-EE	85	Proposed Rule		Calculation of equivalent petroleum-based fuel economy of electric vehicles -- 10 CFR part 474
DOE-PR	18	Proposed Rule	2	Acquisition of Federal information resources by contracting, provide procedures governing the acquisition of Federal information
DOE-PR	18	Proposed Rule	2	Acquisition regulation, updated coverage
DOE-PR	48	Proposed Rule	2	Acquisition regulation, updating of patent regulations
DEPARTMENT OF HEALTH AND HUMAN SERVICES				
HHS-PHS	32	Final Rule		Notice regarding section 602 of the Veterans Health Care Act of 1992, entity guidelines
HHS-PHS	23	Final Rule		Health Education Assistance Loan (HEAL) Program: school collection assistance
HHS-PHS	10	Final Rule		Notice of competitive grant applications for tribal management grants for American Indians/Alaska natives, Indian Health Service
HHS-PHS	28	Proposed Rule		Grants for faculty training projects in geriatric medicine and dentistry
HHS-PHS	15	Notice		Health professions preparatory, pregraduate, and indian health professions scholarship grant programs
HHS-PHS	14	Notice		Notice of availability of funds for loan repayment for health professions educational loans
HHS-PHS	6	Proposed Rule		Food labeling, nutrition labeling, small business exemption
HHS-PHS	7	Notice		Indian Health Service research program, grants application announcement
HHS-PHS	14	Notice		Mental health care provider education in HIV/AIDS
HHS-PHS	11	Notice		HIV/AIDS mental health services demonstration program
HHS-PHS	14	Proposed Rule		Medical facility construction and modernization, requirements for provision of services to persons unable to pay
HHS-PHS	4	Notice		Healthy Start initiative, special project grants
HHS-PHS	12	Notice		Community support program: mental health systems improvement demonstration grants for consumer and family networks
HHS-PHS	5	Notice		Cooperative agreements for studies to evaluate the effectiveness of interventions to prevent or reduce childhood lead poisoning, notice of availability of funds
HHS-PHS	5	Notice		Cooperative agreements for studies to determine sources and predictors of lead poisoning in young children, notice of availability of funds for FY 1994
HHS-FDA	2	Proposed Rule	2	Food labeling: health claims and label statements, folate and neural tube defects
HHS-FDA	2	Proposed Rule		Food labeling: health claims for dietary supplements
HHS-FDA	15	Proposed Rule		Medical devices, hearing aid requirements
HHS-FDA	13	Final Rule		Human tissue intended for transplantation
HHS-FDA	1	Final Rule		Quality standards and certification requirements for mammography facilities
HHS-FDA	1	Final Rule		Requirements for accrediting bodies of mammography facilities
HHS-FDA	0	Final Rule	1	Requirements for nutrient content claims for dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances, food labeling
HHS-FDA	0	Final Rule		Health claims and label statements, folate and neural tube defects, food labeling
HHS-FDA	0	Final Rule		Reference daily intake, food labeling
HHS-FDA	0	Final Rule		Establishment of date of application, dietary supplements
HHS-FDA	0	Final Rule		General requirements for health claims for dietary supplements, food labeling
HHS-FDA	58	Proposed Rule	2	Laxative drug products for over-the-counter human use, proposed amendment to the tentative final monograph
HHS-HSA	22	Proposed Rule		Charitable facility compliance alternative -- 42 CFR subpart f
HHS-HSA	14	Final Rule		Program announcement for grants for geriatric education centers for FY 1994
HHS-HSA	14	Final Rule		Program announcement for nursing special project grants for FY 1994
HHS-HSA	7	Proposed Rule		General statutory funding preference for nurse anesthetist traineeships for FY 1994, program announcement and proposed minimum percentages

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EXECUTIVE ORDER 12866 REVIEWS
OCTOBER 1, 1993 -- MARCH 31, 1994
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AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	* SIGNIFICANCE	TITLE
HHS-HSA	7	Proposed Rule		Grants for professional nurse traineeships for FY 1994, program announcement and proposed minimum percentages
HHS-HSA	12	Proposed Rule		Announcement of availability of funds for family planning research grant
HHS-HSA	8	Proposed Rule		Program announcement for AIDS regional education and training centers
HHS-HSA	8	Proposed Rule		Program announcement for implementation of the statutory funding preference for allied health project grants for FY 1994, proposed minimum percentages
HHS-HSA	18	Final Rule		Rural health outreach program
HHS-HSA	9	Final Rule		Grants for health professions projects in geriatrics
HHS-HSA	19	Final Rule		Grants for interdisciplinary training for health care for rural areas for FY 1994 -- program announcement no. 2148
HHS-HSA	15	Proposed Rule		Program announcement for grants for establishment of departments of family medicine
HHS-HSA	7	Proposed Rule		Implementation of the general statutory funding preference for grants for nurse anesthetist education programs for FY 1994 -- PN 2154
HHS-HSA	14	Final Rule		Disadvantaged health professions faculty loan repayment program -- PN 2160
HHS-HSA	14	Final Rule		Ryan White title iv, HIV demonstration program for children, adolescents, and families (no. 2165), notice of availability of funds
HHS-HSA	16	Proposed Rule		Program announcement and proposed funding priorities for special project grants to schools of public health for FY 1994
HHS-HSA	16	Proposed Rule		Proposed funding preference and priority for grants for programs for physicians' assistants for FY 1994, program announcement and proposed minimum percent
HHS-HSA	16	Final Rule		Special project grants, maternal and child health services, federal set-aside program, collaborative health, education, and human services systems
HHS-HSA	13	Final Rule		Emergency medical services for children demonstration grants, notice of availability of funds
HHS-HSA	13	Proposed Rule		Cooperative agreements for area health education centers programs, program announcement
HHS-HSA	14	Notice		Availability of funds for the community scholarship programs
HHS-HSA	14	Notice		Special project grants and cooperative agreements, maternal and child health services, federal set-aside program
HHS-HSA	14	Notice		Rural telemedicine grant program
HHS-HSA	6	Notice		Availability of funds for community and migrant health center activities
HHS-HSA	8	Notice		Rural health outreach grant program
HHS-HSA	13	Notice		Junior National Health Service Corps, junior health careers opportunity program
HHS-HSA	10	Notice		Grants to improve emergency medical services and trauma care in rural areas
HHS-HSA	14	Notice		Availability of funds for grants to provide comprehensive health promotion, disease prevention, and primary health care services to native Hawaiians
HHS-HSA	14	Notice		Special projects of national significance
HHS-HSA	8	Notice		Model state-supported AHEC program
HHS-HSA	12	Notice		Notice of availability of funds for general family planning training grants
HHS-HSA	12	Notice		Notice of availability of funds for family planning nurse practitioner training grants
HHS-CDC	7	Final Rule		Grants for injury control research centers, notice of availability of funds for FY 1994 -- Announcement No. 405
HHS-CDC	23	Proposed Rule		Evaluation of a community intervention in China of the use of Periconceptional Folic Acid supplements to prevent Spina Bifida and Anencephaly
HHS-CDC	18	Proposed Rule		FY 1994 preventive health services addendum to announcement 401, standard accelerated prevention campaign project grants -- Announcement 401a
HHS-CDC	7	Proposed Rule		Cooperative agreements to conduct research, treatment, and education programs on lyme disease in the United States -- Announcement No. 400
HHS-CDC	16	Proposed Rule		Grants for injury prevention research for violence against women, notice of availability of funds for FY 1994 -- Announcement 409
HHS-CDC	8	Notice		Announcement of a cooperative agreement to the association of state and territorial public health laboratory directors -- Announcement No. 413
HHS-CDC	9	Notice		Grants for education programs in occupational safety and health, notice of availability of funds for FY 1995 -- Announcement No. 123
HHS-CDC	19	Notice		Announcement of a cooperative agreement to the ambulatory sentinel practice network -- Announcement No. 416
HHS-CDC	5	Notice		State-based programs to reduce the burden of diabetes: a health systems approach -- Announcement No. 424
HHS-NIH	4	Final Rule		National Heart, Lung, and Blood Institute grants for prevention and control projects
HHS-NIH	17	Final Rule		Minority biomedical research support program
HHS-NIH	35	Final Rule		NIH guidelines on the inclusion of women and minorities as subjects in clinical research
HHS-NIH	21	Final Rule		Availability of training fellowships under the NIH Intramural Research Training Award (IRTA) Program
HHS-SAMHSA	17	Notice		Substance abuse prevention demonstration grants for high risk youth populations
HHS-HCFA	56	Proposed Rule	1	Extended Medicaid for certain families who lose AFDC eligibility because of increased earned income or loss of earned income disregards, work supplementation ....
HHS-HCFA	34	Final Rule		Carrier jurisdiction for claims for durable equipment, prosthetics, orthotics, and supplies (DMEPOS), Medicare program -- 42 CFR part 421
HHS-HCFA	43	Final Rule		Required laboratory procedures for rural health clinics -- BPD-783-fc
HHS-HCFA	47	Final Rule		Intermediary and carrier checks that are lost, stolen, defaced, mutilated, destroyed, or paid on forged endorsements -- 42 CFR part 424, BPO-114-fc
HHS-HCFA	75	Proposed Rule	1	Special payment limits for home blood glucose monitors -- 42 CFR part 414, PBD-778-pn
HHS-HCFA	72	Final Rule	1	Deduction of incurred medical expenses (spenddown), Medicaid -- MB 020-fc
HHS-HCFA	71	Proposed Rule	2	Revisions to the definition of end-stage renal disease and resumption of entitlement
HHS-HCFA	70	Final Rule		Health care financing research and demonstration cooperative agreements and grants for FY 1993 and 1994

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HHS-HCFA	61	Final Rule		Coverage of Eopoetin (EPO) used by competent home dialysis patients -- BPD-737-f
HHS-HCFA	5	Final Rule		Part A premium for 1994 for the uninsured aged and for certain disabled individuals who have exhausted other entitlement -- OACT-043-n
HHS-HCFA	38	Proposed Rule	1	Proposed additions to and deletions from the current list of covered procedures for ambulatory surgical centers, Medicare program -- BPD-776-pn
HHS-HCFA	90	Proposed Rule	2	Standards for quality of water used in dialysis and revised guidelines on reuse of hemodialyzer filters for end-stage renal disease patients
HHS-HCFA	87	Final Rule	2	Partial hospitalization services in Community Mental Health Centers
HHS-HCFA	1	Final Rule		Monthly actuarial rates and monthly supplementary medical insurance premium rates beginning January 1, 1994, Medicare program -- OACT-044-n
HHS-HCFA	12	Final Rule	1	Medicare program: physician performance standard rates of increase for federal FY 1994 and physician fee schedule update for calendar year 1994 -- BPD-774-
HHS-HCFA	90	Proposed Rule	1	Limit on payments to HMOs, CMPs, and HCPPs -- OCC-018-p
HHS-HCFA	86	Proposed Rule	2	Health Maintenance Organization and Competitive Medical Plan national coverage decisions, Medicare -- BPD-732-p
HHS-HCFA	8	Final Rule	1	Revisions to payment policies and adjustments to the relative value units under the physician fee schedule, Medicare program -- BPD-770-fc
HHS-HCFA	58	Final Rule	1	Limitations on aggregate payments to disproportionate share hospitals, FY 1994
HHS-HCFA	54	Proposed Rule	1	Third party liability cost-effectiveness waivers
HHS-HCFA	89	Proposed Rule	1	Low-income eligibility groups and coverage of services legislative changes, Medicare program -- MB-13-p
HHS-HCFA	13	Proposed Rule		Withdrawal of coverage of diagnostic nocturnal penile tumescence testing (impotence testing), Medicare program -- BPD-780-pn
HHS-HCFA	9	Final Rule		Schedule of limits for skilled nursing facility inpatient routine service costs, effective October 1, 1993 -- BPD-795-nc
HHS-HCFA	63	Final Rule	1	Changes to the requirement for annual physician acknowledgement of physician attestation -- BPD-769-fc
HHS-HCFA	64	Proposed Rule		Change in provider agreement regulations related to federal employee health benefits, BPD-748-p
HHS-HCFA	45	Final Rule	2	Freedom of choice waiver granted under section 1915(b) of the Social Security Act, conforming changes to amendments made to the act by sections 4604 and 4742
HHS-HCFA	37	Final Rule	2	Computer matching and privacy protection for Medicaid eligibility
HHS-HCFA	56	Proposed Rule	2	Intermediary and carrier functions, Medicare program
HHS-HCFA	52	Final Rule		Data, standards, and methodology used to establish budgets for fiscal intermediaries and carriers, Medicare program
HHS-HCFA	7	Proposed Rule		Post-contract protections and other coordinated care issues -- OCC-011-p
HHS-HCFA	37	Final Rule		Aggregation of Medicare claims for administrative appeals -- BPD-694-f
HHS-HCFA	28	Final Rule		Diagnosis codes on physician bills, Medicare -- BPD-610-f
HHS-SSA	56	Final Rule		Suspension of benefits where individual is deported, exemption from social security because of religious beliefs -- 20 CFR part 404, subparts d, e, and k
HHS-SSA	56	Final Rule		Suspension of dependent's benefits when a worker is in an extended period of eligibility -- 20 CFR parts 404.401a and 404.1592a
HHS-SSA	56	Final Rule	1	Representation of claimants for benefits under title II and/or title XVI
HHS-SSA	31	Final Rule		Considering an application filed under the Railroad Retirement Act as an application for social security benefits -- 20 CFR part 404
HHS-SSA	56	Final Rule		Continued entitlement of deemed spouse -- 20 CFR part 404, subparts d and e
HHS-SSA	54	Final Rule	2	Redetermination of supplemental security income eligibility -- 20 CFR part 416, regulation No. 16, subpart b, SSA-161
HHS-SSA	58	Proposed Rule	1	Revised medical criteria for determination of disability, musculoskeletal system and related criteria -- Regulation No. 4, subpart p
HHS-SSA	58	Final Rule	1	Revised medical criteria for determination of disability, cardiovascular system
HHS-SSA	10	Final Rule	1	Extension of expiration dates for various body system listings
HHS-SSA	89	Final Rule	1	Payments for vocational rehabilitation (VR) services
HHS-SSA	0	Final Rule	1	Determining disabaility and blindness, extension of expiration date for cardiovascular system listings -- 20 CFR part 404, Regulation No. 4, subpart p, insurance
HHS-ACF	14	Proposed Rule		Availability of financial assistance for native american social and economic development projects to promote self-sufficiency
HHS-ACF	28	Proposed Rule		Notice of proposed program instruction requiring all head start programs to provide smoke-free environments
HHS-ACF	26	Final Rule	1	Statewide automated child welfare information systems
HHS-ACF	26	Final Rule	1	Adoption and foster care analysis and reporting system
HHS-ACF	13	Notice		The administration on developmental disabilities announcing the request for public comments on proposed developmental disabilities funding
HHS-ACF	20	Notice		Availability of financial assistance for improving the capability of Indian tribal governments to regulate environmental quality
HHS-HDSO	28	Final Rule		Head Start Public and Indian Housing Child Care Demonstration Project, grants availability, FY 1993 program announcement
HHS-HDSO	51	Proposed Rule		Grants for state and community programs on aging
HHS-OS	64	Proposed Rule		Revisions to the peer review organization sanctions process
HHS-OFA	17	Proposed Rule	2	Child support enforcement, paternity establishment

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT				
HUD-HUDSEC	90	Proposed Rule		Lead-based paint hazard elimination
HUD-HUDSEC	5	Final Rule		Prohibition of advance disclosure of funding decisions, amendments -- part 4
HUD-HUDSEC	6	Final Rule		Implementation of OMB Circular A-133
HUD-HUDSEC	36	Final Rule		Home Investment Partnerships Program (FR-3411)
HUD-HUDSEC	7	Interim Final Rule		Home Investment Partnerships Program
HUD-OH	19	Final Rule		Electronic transmission of required data for certification and recertification and subsidy billing procedures for multifamily subsidized projects
HUD-OH	15	Final Rule		GNMA requests for full insurance on coinsurance loans
HUD-OH	63	Proposed Rule		Single-family property disposition program, closing agent escrow accounts
HUD-OH	17	Final Rule		Expedited procedures for RTC multifamily properties
HUD-OH	20	Final Rule		Flexible subsidy program for troubled projects -- 24 CFR part 219
HUD-OH	43	Final Rule	1	Manufactured home construction and safety standards on wind standards
HUD-OH	60	Proposed Rule	2	Assisted living facilities under section 232
HUD-OH	12	Proposed Rule		Termination of tenancy for criminal activity
HUD-OH	28	Proposed Rule	1	Contract rent annual adjustment factors, revision to part 888 HAPP
HUD-OH	54	Final Rule	1	Amendments to regulation X, the Real Estate Settlement Procedures Act regulation (subordinate liens) -- FR-3382
HUD-OH	21	Final Rule		Multifamily property disposition, state housing finance agency demonstration program
HUD-OH	14	Proposed Rule	1	Sale of HUD-held multifamily mortgages
HUD-GNMA	86	Proposed Rule	2	Real estate mortgage investment conduit, notice of GNMA REMIC (FR-3555)
HUD-CPD	82	Proposed Rule	2	Miscellaneous amendments to correct identified deficiencies in the Community Development Block Grant Program -- part 570
HUD-CPD	8	Final Rule	2	Designation of empowerment zones and enterprise communities -- part 597
HUD-CPD	11	Notice		Notice of request for consideration for community development corporation designation
HUD-FHEO	1	Final Rule	1	Administrative proceedings under section 812 of the Fair Housing Act (FR-3485)
HUD-PIH	40	Proposed Rule	1	Designated housing, public housing designated for occupancy by disabled, elderly, or disabled and elderly families, proposed new part 945 and proposed amendments
HUD-PIH	46	Proposed Rule		Amendments to the Comprehensive Grant Program
HUD-PIH	35	Proposed Rule		Tenant participation and tenant opportunities in public housing (FR-3568)
DEPARTMENT OF THE INTERIOR				
DOI-BLM	14	Final Rule		Onshore oil and gas unit agreements: unproven areas
DOI-BLM	11	Final Rule		Land exchanges, general
DOI-BLM	3	Final Rule		Protection, management, and control of wild free-roaming horses and burros
DOI-BLM	5	Proposed Rule	1	Department hearings and appeals procedures, cooperative relations gazing administration, exclusive of Alaska
DOI-BLM	33	Proposed Rule		Onshore oil and gas operations, Federal and Indian oil and gas leases, onshore oil and gas order no. 5, measurement of gas
DOI-BLM	4	Proposed Rule	1	Department hearings and appeals procedures, cooperative relations gazing administration, exclusive of Alaska
DOI-RB	15	Proposed Rule		Mitigate losses and damages resulting from drought -- proposed rescission of 43 CFR part 423
DOI-RB	15	Proposed Rule		Payment of claims for actual damages -- proposed rescission of 43 CFR part 419
DOI-RB	15	Proposed Rule		Exchange of certain unpatented farm units -- proposed rescission of 43 CFR part 406
DOI-RB	15	Proposed Rule		Management of water rights for individuals receiving benefits -- proposed rescission of 43 CFR part 230
DOI-MMS	10	Final Rule		Administrative amendments of regulations governing royalty oil surety requirements, information collection requirements and addresses
DOI-FWS	9	Final Rule		Injurious wildlife: importation of fish or fish eggs
DOI-FWS	14	Final Rule		Incidental, but not intentional, take of small numbers of Polar Bears and Walruses during oil and gas industry operations (exploration, development, and production)
DOI-FWS	15	Final Rule		Wild Bird Conservation Act of 1992
DOI-FWS	7	Proposed Rule	1	Endangered and threatened wildlife and plants, proposed revision of the special rule for nonessential experimental population of Red Wolves in North Carolina

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DOI-FWS	107	Proposed Rule		Ext	Wild Bird Conservation Act of 1992
DOI-FWS	23	Final Rule			Captive-bred wildlife regulation
DOI-FWS	4	Final Rule			Endangered and threatened wildlife and plants, special rule concerning take of the threatened Coastal California Gnatcatcher
DOI-FWS	56	Final Rule			Endangered and threatened wildlife and plants, designation of critical habitat for the Least Bell's Vireo
DOI-FWS	52	Proposed Rule			Regulations prohibiting taking of free ranging Wolves and Wolvertines on Alaska national wildlife refuges on the same day the trapper or hunter is airborne
DOI-FWS	2	Proposed Rule	1		Endangered and threatened wildlife and plants, revised proposed critical habitat designation for the Delta Smelt
DOI-FWS	36	Final Rule			Endangered and threatened wildlife and plants, determination of critical habitat for the Mojave population of the Desert Tortoise
DOI-FWS	2	Proposed Rule	1		Endangered and threatened wildlife and plants, proposed designation of critical habitat for the Marbled Murrelet
DOI-FWS	16	Final Rule			Designation of critical habitat for the threatened Loach Minnow, endangered and threatened wildlife and plants
DOI-FWS	16	Final Rule			Designation of critical habitat for the threatened Spikedace, endangered and threatened wildlife and plants
DOI-FWS	4	Final Rule	1		Designate critical habitat for four endangered Colorado River fishes
DOI-NPS	23	Proposed Rule	2		National Capital Region parks, sale and distribution of newspapers, leaflets, and pamphlets
DOI-OSMRE	19	Proposed Rule			Coal formation fire control
DOI-BIA	62	Proposed Rule	1		Indian Self-determination and Education Assistance Act regulations
DOI-BIA	24	Final Rule			Protection of archaeological resource
DOI-BIA	45	Proposed Rule			General forest regulations
DOI-BIA	32	Final Rule			Peparation of rolls of Indians, roll of independent Seminole Indians of Florida
DOI-BIA	14	Interim Final Rule	1		Procedures for establishing that an American Indian group exists as an Indian tribe -- 25 CFR 83
DOI-ASPMB	43	Final Rule	1		Natural Resources Damage Assessments
DEPARTMENT OF JUSTICE					
DOJ-PARCOM	24	Proposed Rule			Category eight policy for murder -- 28 CFR 2.20
DOJ-PARCOM	24	Final Rule			Prisoners transferred pursuant to treaty -- 28 CFR 2.62
DOJ-PARCOM	24	Proposed Rule			Ammunition as a weapon -- 28 CFR 2.20
DOJ-INS	5	Final Rule			Approval process for school to admit nonimmigrant students
DOJ-INS	4	Final Rule			Temporary protected status, exception to registration deadlines
DOJ-INS	4	Proposed Rule			Petitioning for foreign-born orphans by United States citizens
DOJ-INS	4	Proposed Rule			Control of employment of aliens
DOJ-INS	4	Proposed Rule			Nonimmigrant classes, B visitor for business or pleasure
DOJ-INS	29	Proposed Rule			Expiration of the replenishment agricultural worker program
DOJ-INS	41	Proposed Rule			Rules and procedures for adjudication of applications for asylum of withholding of deportation and for employment authorization
DOJ-DEA	5	Proposed Rule			Reporting on psychotropic substances
DOJ-BOP	25	Proposed Rule			Drug abuse treatment programs
DOJ-BOP	25	Final Rule			Mandatory English as a second language program
DOJ-BOP	11	Final Rule			Compassionate release
DOJ-BOP	23	Final Rule			Use of force and application of restraints
DEPARTMENT OF LABOR					
DOL-ETA	20	Final Rule	1		Job Training Partnership Act (Job Corps) -- title IV-b
DOL-OSHA	9	Proposed Rule	1		Indoor air quality

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DEPARTMENT OF STATE				
STATE	28	Final Rule		Amendments to the international traffic in arms regulations (ITAR), the U.S. munitions list, category V -- 22 CFR part 121.1
STATE	28	Final Rule		Amendments to the international traffic in arms regulations (ITAR), the U.S. munitions list, category VI -- 22 CFR part 121
STATE	15	Proposed Rule		Grants and cooperative agreements with institutions of higher education, hospitals, and other nonprofit organizations
STATE-AFA	20	Final Rule		Foreign prohibitions on longshore work by U.S. nationals
STATE-AFA	4	Proposed Rule		Diversity of immigrants -- 22 CFR 42.33, implementation of sections 201(a)(3), 201(e), 203(c), and 204(a)(1)(g) of the Immigration and Nationality Act as amended
STATE-AFA	6	Proposed Rule		Implementation of chapter 16 of NAFTA and sections 341 and 342 of the North American Free Trade Implementation Act
DEPARTMENT OF TRANSPORTATION				
DOT-OST	0	Final Rule	1	Transportation for individuals with disabilities
DOT-OST	0	Final Rule	1	Management information system (MIS) for workplace drug testing programs (common rule)
DOT-OST	13	Final Rule	1	Prevention of alcohol misuse in the aviation, transit, motor carrier, railroad, and pipeline industries, common preamble
DOT-OST	7	Proposed Rule	1	Procedures for workplace drug and alcohol testing programs, blood testing programs
DOT-OST	7	Proposed Rule	1	Random drug testing program
DOT-OST	3	Final Rule	1	Procedures for transportation workplace drug and alcohol testing programs
DOT-USCG	12	Final Rule	1	Documentation of vessels, recording of instruments, fees
DOT-USCG	28	Final Rule	1	Discharge removal equipment for vessels carrying oil
DOT-USCG	35	Final Rule	1	Licensing of pilots, manning of vessels by pilots -- 84-060
DOT-USCG	80	Proposed Rule	1	Security for passenger vessels and passenger terminals
DOT-USCG	0	Final Rule	1	Collection of drug test information (MIS), programs for chemical drug testing of commercial vessel personnel
DOT-USCG	12	Proposed Rule	1	Collection of commercial vessel and personnel accident (marine casualty) information & programs for chemical drug & alcohol testing of commercial vessel personnel
DOT-USCG	17	Proposed Rule	1	Great lakes pilotage rate methodology -- 92-072
DOT-FAA	0	Final Rule	1	Antidrug program for personnel engaged in specific aviation activities, management information system
DOT-FAA	2	Final Rule	1	Training and checking in ground icing conditions
DOT-FAA	6	Proposed Rule	1	Antidrug program and alcohol misuse prevention program for employees of foreign air carriers engaged in specified aviation activities
DOT-FAA	1	Final Rule	1	Antidrug program for personnel engaged in specified aviation activities
DOT-FAA	1	Proposed Rule	1	Alcohol misuse prevention program for personnel engaged in specified aviation activities
DOT-FHWA	2	Final Rule	1	Qualification of drivers, medical examination
DOT-FHWA	62	Final Rule	1	Radar detectors in commercial motor vehicles
DOT-FHWA	34	Final Rule	1	Management and monitoring systems
DOT-FHWA	3	Final Rule	1	Statewide planning, metropolitan planning
DOT-FHWA	42	Final Rule	1	Private motor carriers of passengers
DOT-FHWA	0	Final Rule	1	Controlled substances testing, recordkeeping and reporting requirements
DOT-FHWA	6	Proposed Rule	1	Foreign- based motor carriers and drivers, controlled substances and alcohol use and testing
DOT-FHWA	1	Final Rule	1	Controlled substances and alcohol use and testing
DOT-NHTSA	35	Proposed Rule	1	Motor vehicle content labeling -- 49 CFR part 583
DOT-NHTSA	11	Proposed Rule	1	Determination of effectiveness, highway safety programs
DOT-NHTSA	1	Proposed Rule	1	Compressed natural gas fuel containers, federal motor vehicle safety standards
DOT-NHTSA	1	Proposed Rule	1	Antilock brake systems for light vehicles (anprm)
DOT-NHTSA	14	Prerule	1	Light Truck Fuel Economy Standards, model years 1998-2006
DOT-NHTSA	14	Final Rule	1	Light Truck Fuel Economy Standards, model years 1996-1997

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DOT-FRA	0	Final Rule	1	Amendments to alcohol/drug regulations, annual reporting requirements
DOT-FRA	15	Proposed Rule	1	Grade crossing signal system safety
DOT-FRA	13	Final Rule	1	Railroad police officers -- 49 CFR part 207
DOT-FRA	1	Final Rule	1	Amendments to alcohol/drug regulations, alcohol testing
DOT-FRA	11	Proposed Rule	1	Maintenance-of-way equipment, freight car safety standards
DOT-FTA	29	Proposed Rule	1	Rail fixed guideway systems, state safety oversight
DOT-FTA	1	Final Rule	1	Prevention of prohibited drug use in transit operations
DOT-FTA	1	Final Rule	1	Prevention of alcohol misuse in transit operations
DOT-MarAd	16	Interim Final Rule	1	Obligation guarantees
DOT-RSPA	0	Final Rule	1	Management information system (MIS) standardized data collection and reporting of drug testing results
DOT-RSPA	35	Final Rule	1	Operation and maintenance procedures for pipelines
DOT-RSPA	1	Final Rule	1	Alcohol misuse prevention program
DEPARTMENT OF THE TREASURY				
TREAS-OTS	0	Proposed Rule		Community Reinvestment Act regulations
TREAS-OCC	35	Proposed Rule		Lending limits
TREAS-OCC	1	Proposed Rule		Community Reinvestment Act
DEPARTMENT OF VETERANS AFFAIRS				
VA	87	Proposed Rule		Examinations
VA	17	Final Rule		Standards of ethical conduct and related responsibilities
VA	15	Final Rule		Loan guaranty: limited denial of participation in the loan guaranty program
VA	72	Proposed Rule		Claims based on chronic effects of exposure to vesicant agents
VA	72	Proposed Rule		Full disclosure of beneficiary's income
VA	27	Proposed Rule		Veterans education, implementation of the Veterans' Benefits Act of 1992 and the National Defense Authorization Act for FY 1993 in the post-vietnam era veteran
VA	18	Final Rule		Veterans education, standardization of programs
VA	88	Proposed Rule		Claims based on exposure to ionizing radiation
VA	17	Final Rule		Reservists education, the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 and the Montgomery GI bill, selected reserve
VA	13	Final Rule		Veterans education: Veterans Job Training Act
VA	88	Proposed Rule	2	Loan guaranty: acceptance of partial payments, indemnification of default
VA	78	Final Rule	2	To amend the travel authority for beneficiaries who are in receipt of pension
VA	51	Proposed Rule	1	Disease associated with exposure to certain herbicide agents, multiple mayeloma and respiratory cancers
VA	63	Proposed Rule		Loan guaranty: implementation of Public Law 102-547
VA	49	Proposed Rule		Line of duty
VA	23	Proposed Rule		Loan guaranty and vocational rehabilitation and counseling programs -- VA Acquisition Regulation (VAAR) part 871
VA	14	Final Rule	1	Disease associated with exposure to certain herbicide agents
VA	14	Final Rule		Procedural due process and appellate rights
VA	14	Final Rule		Procedural due process and appellate rights
VA	2	Proposed Rule		Reservists education: the Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI bill
VA	15	Proposed Rule		Schedule for rating disabilities: diseases of the ear and other sense organs

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ENVIRONMENTAL PROTECTION AGENCY				
EPA-GCEC	17	Final Rule		Simplification of EPA's process for treating indian tribes as states, amendments to interim final rule -- 40 CFR parts 35 and 130
EPA-GCEC	17	Proposed Rule		Simplification of EPA's process for treating indian tribes as states, proposed amendments -- 40 CFR parts 124, 131, 142, 144, 145, and 233
EPA-WATER	4	Proposed Rule		Analytical methods for regulated drinking water contaminants, national primary drinking water regulations
EPA-WATER	37	Proposed Rule	1	Water quality standards for surface waters of the Sacramento River, San Joaquin River, and San Francisco Bay and delta of the State of California
EPA-WATER	14	Proposed Rule	2	Drinking water information collection rule
EPA-WATER	91	Final Rule	1	Combined sewer overflow (CSO) control policy
EPA-WATER	51	Proposed Rule	1	Pesticide chemicals point source category, formulating, packaging, and repackaging sub-categories, effluent limitations guidelines and NSPS
EPA-SWER	49	Final Rule	1	List of regulated substances and thresholds for accidental release prevention, requirements for petitions under section 112(r) of the Clean Air Act as amended
EPA-SWER	36	Proposed Rule	1	National priorities list for uncontrolled hazardous waste sites -- Proposal No. 16
EPA-SWER	34	Proposed Rule	2	Hazardous waste management system, Carbamate production identification and listing of hazardous waste and CERCLA hazardous substance designation & reportable
EPA-SWER	17	Final Rule	2	Underground storage tank financial responsibility requirements, 1998 compliance deadline for tribally-owned underground storage tanks (UST) on indian lands that...
EPA-SWER	20	Proposed Rule	2	Standards for the management of specific hazardous wastes, amendment to subpart c, recyclable materials used in a manner constituting disposal
EPA-SWER	11	Final Rule	2	National priorities list for uncontrolled hazardous waste sites
EPA-AR	7	Final Rule		Protection of stratospheric ozone, Federal procurement regulation -- 40 CFR part 82, SAN 2899
EPA-AR	36	Proposed Rule		Labeling supplemental proposal -- 40 CFR part 82, SAN 3348
EPA-AR	46	Final Rule		Ohio miscellaneous VOC RACT I and II regulations -- SAN 3376, CH-10-5677
EPA-AR	28	Final Rule	1	Criteria and procedures for determining conformity to State or Federal implementation plans of transportation plans, programs, and projects funded or approved
EPA-AR	60	Proposed Rule	1	National emission standards for hazardous air pollutants for source category: gasoline distribution (stage I) -- SAN 2926
EPA-AR	36	Proposed Rule	2	Surface coating of plastic parts control techniques guideline -- title I, Clean Air Act amendments
EPA-AR	18	Final Rule	2	Approval of State programs and delegation of Federal authorities -- 42 CFR part 63, subpart e, SAN 3142
EPA-AR	14	Proposed Rule	1	National emission standards for hazardous air pollutants for alogenated solvent cleaners -- SAN 2839
EPA-AR	87	Proposed Rule	1	Field citation program -- 40 CFR part 59, SAN 2937
EPA-AR	28	Final Rule	1	Accelerated phaseout of ozone depleting chemicals and listing and phaseout of Methyl Bromide
EPA-AR	26	Proposed Rule	1	National emissions standard for hazardous air pollutants for Chromium electroplating and anodizing operations -- SAN 2841
EPA-AR	91	Proposed Rule	1	Requirements for constructed, reconstructed, or modified major sources under Clean Air Act section 112(g) -- SAN 2932
EPA-AR	71	Proposed Rule	1	Regulations governing awards under section 113(f) of the Clean Air Act, the Clean Air Act awards rule -- SAN 2939
EPA-AR	3	Final Rule	2	Schedule for the promulgation of emission standards under section 112(e) of the Clean Air Act amendments of 1990
EPA-AR	0	Final Rule	1	Determining conformity of general Federal actions to State or Federal implementation plans
EPA-AR	27	Proposed Rule		Sip: West Virginia pm-10 revision, approval and limited disapproval -- SAN 3387, SIP-WV-5-1-5149
EPA-AR	13	Final Rule		Clean fuel fleet program definitions and general provisions -- SAN 3070
EPA-AR	90	Final Rule	2	Preemption of state regulations for nonroad engine and vehicle standards
EPA-AR	1	Proposed Rule	1	Regulation of fuels and fuel additives: renewable oxygenate requirement for reformulated gasoline
EPA-AR	1	Final Rule	1	Fuel and fuel additives: standards for reformulated gasoline
EPA-AR	67	Final Rule	1	Acid rain NOX regulations under title IV of the Clean Air Act amendments of 1990
EPA-AR	12	Proposed Rule		Disapproval of Service Plastic's request for operating restrictions -- IL44-1-5481, SAN-3396
EPA-AR	14	Final Rule	2	Model standards and techniques for control of Radon in new buildings, proposed guidance document, not a rulemaking -- SAN 2975
EPA-AR	18	Final Rule		Reconsideration for GM Electromotive Division -- IL-1226-5785, SAN 3399
EPA-AR	63	Proposed Rule	2	National emission standards for hazardous air pollutants for Ethylene Oxide commercial sterilization and fumigation operations -- SAN 2484
EPA-AR	72	Final Rule	2	Standards for emissions from natural gas-fueled and liquefied petroleum gas-fueled motor vehicles and motor vehicle engines and certification procedures for....
EPA-AR	62	Final Rule	1	Hazardous organic NESHAP (HON) for the synthetic organic chemical manufacturing industry (SOCMI) and other processes subject to the negotiated regulation for equi
EPA-AR	56	Final Rule	2	National ambient air quality primary standards for Carbon Monoxide, final decision -- SAN 2762
EPA-AR	85	Proposed Rule	1	Emission standards for new nonroad spark-ignition engines at and below 19 kilowatts, control of air pollution
EPA-AR	15	Final Rule	1	Control of air pollution from new motor vehicles and new motor vehicle engines, refueling emission regulations for light-duty vehicles & trucks & heavy-duty vehicles
EPA-AR	27	Final Rule		Significant new alternatives policy (SNAP) program -- SAN 2991 -- title VI of the Clean Air Act amendments of 1990
EPA-AR	28	Proposed Rule	2	National emissions standard for hazardous air pollutants for magnetic tape manufacturing operations -- SAN 2946
EPA-AR	18	Final Rule	1	General provisions for national emission standards for hazardous air pollutants for source categories -- 40 CFR part 63, subpart a, SAN 2918
EPA-AR	0	Proposed Rule	1	California Federal implementation plans for Sacramento, Ventura, and the South Coast under the Clean Air Act -- section 110(c)
EPA-AR	5	Final Rule	1	Economic incentive program rules -- SAN 2964

* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA
Ext -- Extended at request of the agency

EXECUTIVE ORDER 12866 REVIEWS
OCTOBER 1, 1993 -- MARCH 31, 1994
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	* SIGNIFICANCE	TITLE
EPA-OPPTS	91	Proposed Rule	1	Emergency Planning and Community Right-to-Know Act, section 313 proposed addition of chemicals -- 40 CFR 372.65
EPA-OPPTS	17	Final Rule	1	Addition of 21 chemicals and 2 chemical categories to the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act
EPA-OPPTS	17	Final Rule	1	Petition to add Hydrochlorofluorocarbons (HCFCs) to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-
EPA-OPPTS	61	Proposed Rule	1	Provision of lead hazard information pamphlet before renovation of target housing
EPA-OPPTS	70	Proposed Rule	2	Fishing sinker -- TSCA section 6
OFFICE OF MANAGEMENT AND BUDGET				
OMB	108	Final Rule	Ext	Application of cost accounting standards board regulations to educational institutions -- 48 CFR parts 9903, 9905
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION				
NASA	1	Final Rule	1	NASA far supplement synopsizing requirements to implement FAC 90-20, expedited implementation of NAFTA
NASA	18	Final Rule	2	Streamline the major system acquisition process
NASA	22	Proposed Rule	2	Increasing contractor liability on research and development contracts
NASA	20	Final Rule	2	Performance-based contracting
CORPORATION FOR NATIONAL AND COMMUNITY SERVICE				
CNCS	1	Proposed Rule		Corporation grant programs and support and investment activities
CNCS	12	Final Rule		Corporation for National and Community Service: requirements for State commissions on national and community service
CNCS	22	Proposed Rule		Corporation for National and Community Service
CNCS	56	Proposed Rule		Uniform administrative requirements for grants and cooperative agreements to State and local governments, governmentwide debarment and suspension requirements
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION				
EEOC	27	Final Rule		Collection of debts by Federal tax refund offset
FEDERAL EMERGENCY MANAGEMENT AGENCY				
FEMA	44	Proposed Rule		National flood insurance program: insurance coverage and rates, criteria for land management, use, identification, and mapping of flood control restoration zones
FEMA	5	Proposed Rule		National flood insurance program, insurance rates
GENERAL SERVICES ADMINISTRATION				
GSA	55	Final Rule		Aviation, transportation, and motor vehicles -- FPMR subchapter g amendment
GSA	66	Final Rule		Interim admendment to FIRMR to implement provisions of Executive Order 12845 requiring agencies to purchase energy efficient computer equipment
GSA	0	Final Rule		Maximum per diem rates -- Federal Travel Regulation (FTR), amendment 33
GSA	28	Final Rule	2	Rules of procedure of the General Services Administration Bboard of Contract Appeals
GSA	57	Final Rule	1	Identification of energy-efficient office equipment and supplies containing recovered materials or other environmental attributes
GSA	15	Proposed Rule	2	Placement of orders -- 48 CFR 552.216-73, ordering information -- 48 CFR 552.216-74
GSA	4	Final Rule	1	Changes to the FTR maximum per diem rates -- Federal Travel Regulations (FTR), amendment 34
GSA	40	Final Rule	2	Aviation, transportation, and motor vehicles -- Federal Property Management Regulations, subchapter g, control no. 93-43
GSA	25	Proposed Rule	2	1) reinventing MAS ordering procedures (notice), 2) removing FSS ordering instructions -- FPMR amendment e (proposed rule), 3) amendment to FIRMR to remove ...

* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA
Ext -- Extended at request of the agency

EXECUTIVE ORDER 12866 REVIEWS
OCTOBER 1, 1993 -- MARCH 31, 1994
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	* SIGNIFICANCE	TITLE
NATIONAL ARCHIVES AND RECORDS ADMNINISTRATION				
NARA	0	Proposed Rule	1	Electronic mail systems
UNITED STATES INFORMATION AGENCY				
USIA	7	Interim Final Rule		Educational, scientific, and cultural material; world-wide free flow (export-import) of audio visual materials -- rulemaking 200
USIA	1	Interim Final Rule		Camp counselor exchanges -- rulemaking no. 102
INSTITUTE OF MUSEUM SERVICES				
IMS	10	Final Rule		Institute of Museum Services, technical assistance grants
APPRAISAL SUBCOMMITTEE OF THE FFEIC				
FFIEC	70	Proposed Rule		Freedom of Information Act, requests for confidential treatment of information subject to FOIA and petitions for the issuance, amendment, and repeal of a rule
NATIONAL SCIENCE FOUNDATION				
NSF	84	Final Rule		Investigator financial disclosure policy
NSF	0	Final Rule		Salary offset
NSF	0	Final Rule		Claims collection and administrative offset
OFFICE OF PERSONNEL MANAGEMENT				
OPM	70	Proposed Rule		Temporary, term, and excepted service employment
OPM	27	Proposed Rule		Recomputation of congressional annuities after reemployment
OPM	19	Final Rule		Prevailing rate systems, Champaign, Illinois, NAF wage area
OPM	31	Final Rule		Civil service retirement system, law enforcement officers and firefighters
OPM	8	Final Rule		Prevailing rate systems: Oscoda-Alpena, Michigan, wage area
OPM	10	Final Rule		Termination of the performance management recognition system
OPM	15	Final Rule		Prevailing rate systems, Clark-Hardin-Jefferson, Kentucky, NAF wage area
OPM	13	Final Rule		Prevailing rate systems: redefinition of Santa Clara, California, NAF wage area
OPM	50	Proposed Rule		Interim relief -- 5 CFR part 772
OPM	0	Final Rule		Locality-based comparability payments
OPM	36	Final Rule		Political activity of Federal employees
OPM	8	Proposed Rule		Temporary and excepted service employment
OPM	8	Final Rule		Absence and leave
OPM	1	Proposed Rule		Notification requirements relating to the statutory prohibition on political recommendations under the Hatch Act Reform amendments of 1993
OPM	5	Final Rule		Special pay entitlements for law enforcement officers
OPM	2	Interim Final Rule		Commercial garnishment of Federal employees' pay
OPM	1	Final Rule		Federal employees health benefits acquisition regulation, miscellaneous changes

Ext -- Extended at request of the agency
** Extended at request of the agency

EXECUTIVE ORDER 12866 REVIEWS
OCTOBER 1, 1993 -- MARCH 31, 1994
RECEIVED SINCE OCTOBER 1, 1993

AGENCY/ SUBAGENCY	REVIEW TIME (DAYS)	STAGE OF RULEMAKING	* SIGNIFICANCE	TITLE
OFFICE OF GOVERNMENT ETHICS				
OGE	2	Final Rule		Executive branch financial disclosure, qualified trusts, and certificates of divestiture, amendement
RAILROAD RETIREMENT BOARD				
RRB	50	Proposed Rule		Availability of information to the public
RRB	45	Final Rule	1	Railroad employers' reports and responsibilities
RRB	34	Final Rule	1	Duration of normal extended benefits
RRB	34	Proposed Rule	1	Assessment or waiver of interest, penalties, and administrative costs with respect to collection of certain debts
RRB	31	Final Rule	1	Representative payment
SMALL BUSINESS ADMINISTRATION				
SBA	59	Proposed Rule		Amendments to the amount of flood insurance coverage required of recipients of certain SBA assistance
SBA	21	Final Rule		Physical disaster and economic injury loans, redefining
SBA	54	Proposed Rule		Leverage, regulatory exemptions for non-leveraged licensees, Small Business Investment Companies
SBA	74	Final Rule		Defense economic assistance, business loans
SBA	76	Proposed Rule		Business loans, alter ego - development companies, alter ego
SBA	85	Proposed Rule		Business loan policy, media policy rule
SBA	23	Final Rule		Minority small business and capital ownership development, miscellaneous amendments
SBA	0	Interim Final Rule		Disaster: physical disaster and economic injury loans
SBA	30	Proposed Rule		Loans to State and local development companies, seller financing by regulated lenders
SBA	7	Interim Final Rule		Disaster: physical disaster and economic injury loans, landlord exceptions
SBA	7	Interim Final Rule		Disaster: physical disaster and economic injury loans, definition of major source of employment
SBA	18	Interim Final Rule		Small Business Investment Companies, leverage, participating securities, conditions affecting good standing of licensees
SBA	18	Interim Final Rule		Small Business Investment Companies, small business size standards
SBA	18	Interim Final Rule		Small Business Investment Companies, implementation of P.L. 102-366 and other matters
SBA	13	Proposed Rule		Business loan policy, media policy rule
SBA	0	Interim Final Rule		Small business size standards, inflation adjusted size standards
FEDERAL ACQUISITION REGULATIONS				
FAR	36	Proposed Rule	1	Electronic contracting
FAR	71	Final Rule	1	Exemptions from cost or pricing data
FAR	11	Proposed Rule	1	Electronic contracting
FAR	6	Final Rule	1	Expedited implementation of the North American Free Trade Agreement (NAFTA) Implementation Act of 1993
FAR	40	Proposed Rule	2	Past performance information
FAR	21	Proposed Rule	2	Subcontracting plans -- FAR Case 92-19

* Significance -- 1) Designated Significant by Agency, 2) Designated Significant by OIRA
Ext -- Extended at request of the agency

TABLE 1

EXECUTIVE ORDER REVIEWS
OCTOBER 1, 1993 – MARCH 31, 1994
RECEIVED AFTER OCTOBER 1, 1993

	NUMBER OF REVIEWS			ACTIONS TAKEN						AVERAGE REVIEW TIME		
AGENCY	ECON SIG	NOT ECON SIG	TOTAL	1	2	3	5	9	12	ECON SIG	NOT ECON SIG	ALL
TOTAL	**63**	**515**	**578**	**348**	**177**	**26**	**11**	**0**	**16**	**24**	**26**	**26**
%	**10.9%**	**89.1%**		**60.2%**	**30.6%**	**4.5%**	**1.9%**	**0.0%**	**2.8%**			
USDA	11	83	94	65	20	5	2	0	2	17	20	19
DOC	0	42	42	29	11	2	0	0	0	NA	16	16
DOD	0	8	8	1	5	2	0	0	0	NA	44	44
ED	2	23	25	3	19	3	0	0	0	7	31	29
DOE	1	5	6	3	3	0	0	0	0	78	51	56
HHS	7	119	126	93	24	5	4	0	0	37	27	27
HUD	3	22	25	15	8	2	0	0	0	55	30	33
DOI	1	33	34	25	9	0	0	0	0	4	23	23
DOJ	0	15	15	15	0	0	0	0	0	NA	17	17
DOL	1	1	2	0	2	0	0	0	0	9	20	15
STATE	0	6	6	5	1	0	0	0	0	NA	17	17
DOT	14	30	44	21	23	0	0	0	0	6	21	15
TREAS	2	1	3	1	2	0	0	0	0	1	35	12
VA	0	21	21	15	4	2	0	0	0	NA	40	40
EPA	14	39	53	14	25	0	0	0	14	36	36	36
CNCS	1	3	4	0	4	0	0	0	0	22	23	23
EEOC	0	1	1	1	0	0	0	0	0	NA	27	27
FAR	3	3	6	3	1	2	0	0	0	39	23	31
FEMA	0	2	2	0	2	0	0	0	0	NA	25	25
FFIEC	0	1	1	0	1	0	0	0	0	NA	70	70
GSA	0	9	9	6	3	0	0	0	0	NA	36	36
IMS	0	1	1	1	0	0	0	0	0	NA	10	10
NARA	0	1	1	1	0	0	0	0	0	NA	116	116
NASA	0	4	4	4	0	0	0	0	0	NA	15	15
NSF	0	3	3	2	1	0	0	0	0	NA	84	84
OGE	0	1	1	1	0	0	0	0	0	NA	2	2
OMB	0	1	1	0	1	0	0	0	0	NA	108	108
OPM	0	17	17	13	2	2	0	0	0	NA	19	19
RRB	0	5	5	0	0	0	5	0	0	NA	39	39
SBA	3	13	16	9	6	1	0	0	0	15	42	36
USIA	0	2	2	2	0	0	0	0	0	NA	4	4

TABLE 2

EXECUTIVE ORDER REVIEWS
OCTOBER 1, 1993 – MARCH 31, 1994
RECEIVED PRIOR TO OCTOBER 1, 1993

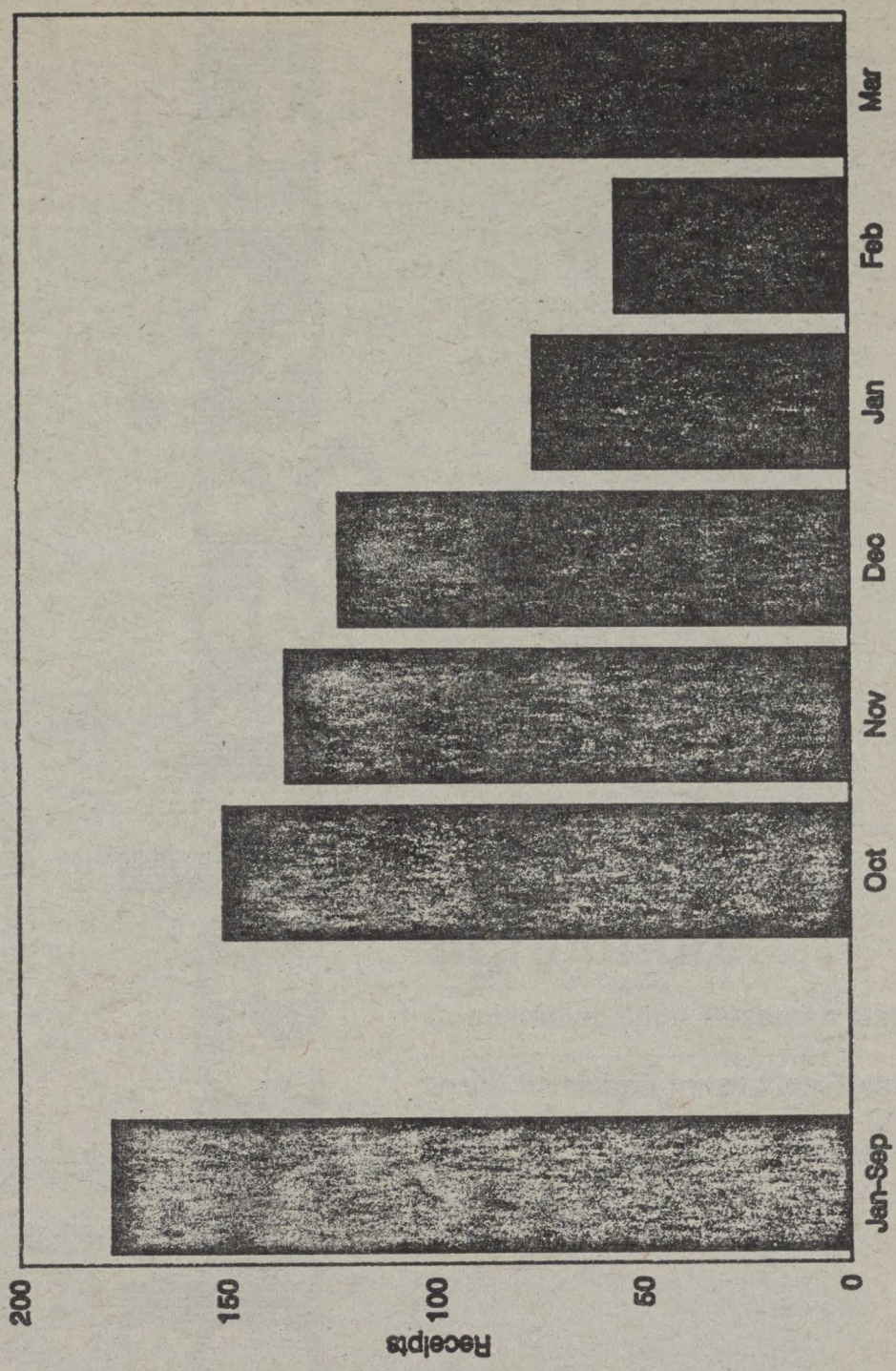
	NUMBER OF REVIEWS			ACTIONS TAKEN						AVERAGE REVIEW TIME		
AGENCY	ECON SIG	NOT ECON SIG	TOTAL	1	2	3	5	9	12	ECON SIG	NOT ECON SIG	ALL
TOTAL	**8**	**167**	**175**	**86**	**60**	**24**	**1**	**2**	**2**	**108**	**74**	**76**
%	**4.6%**	**95.4%**		**49.1%**	**34.3%**	**13.7%**	**0.6%**	**1.1%**	**1.1%**			
USDA	2	26	28	20	6	2	0	0	0	148	55	62
DOC	1	13	14	9	4	1	0	0	0	128	44	50
DOD	0	2	2	0	0	2	0	0	0	NA	99	99
ED	0	9	9	0	6	3	0	0	0	NA	86	86
DOE	0	4	4	2	2	0	0	0	0	NA	121	121
HHS	1	39	40	25	6	6	1	2	0	104	72	73
HUD	1	9	10	4	4	2	0	0	0	42	84	80
DOI	0	7	7	4	2	1	0	0	0	NA	82	82
DOJ	0	0	0	0	0	0	0	0	0	NA	NA	NA
DOL	0	0	0	0	0	0	0	0	0	NA	NA	NA
STATE	0	0	0	0	0	0	0	0	0	NA	NA	NA
DOT	1	6	7	1	4	2	0	0	0	160	149	151
TREAS	0	3	3	1	2	0	0	0	0	NA	81	81
VA	0	8	8	6	0	2	0	0	0	NA	119	119
EPA	2	14	16	1	13	0	0	0	2	67	98	94
AID	0	1	1	0	1	0	0	0	0	NA	36	36
EEOC	0	1	1	0	0	1	0	0	0	NA	205	205
FEMA	0	2	2	0	2	0	0	0	0	NA	51	51
GSA	0	9	9	5	4	0	0	0	0	NA	36	36
NARA	0	1	1	0	1	0	0	0	0	NA	116	116
NASA	0	4	4	2	1	1	0	0	0	NA	47	47
NSF	0	2	2	1	0	1	0	0	0	NA	68	68
OPM	0	5	5	4	1	0	0	0	0	NA	32	32
USIA	0	1	1	1	0	0	0	0	0	NA	11	11
ALL OTHER	0	1	1	0	1	0	0	0	0	NA	74	74

TABLE 3

EXECUTIVE ORDER REVIEWS
REVIEWS PENDING ON APRIL 1, 1994

AGENCY	*1 -- 30*	*31 -- 60*	*61 -- 90*	*OVER 90*	*TOTAL*
TOTAL	**45**	**13**	**8**	**2**	**68**
USDA	10	0	0	1	11
DOC	2	0	0	0	2
DOD	2	0	0	0	2
ED	2	1	4	0	7
DOE	0	0	0	0	0
HHS	6	4	1	0	11
HUD	8	1	0	0	9
DOI	0	0	1	0	1
DOJ	1	0	0	0	1
DOL	0	0	0	0	0
STATE	0	0	0	0	0
DOT	2	0	0	0	2
TREAS	0	0	0	0	0
VA	2	0	0	0	2
EPA	7	3	1	1	12
ACTION	1	0	0	0	1
ATBCB	0	0	1	0	1
FAR	0	1	0	0	1
JMMFF	0	1	0	0	1
OPM	2	2	0	0	4

EXECUTIVE ORDER 12866
RECEIPTS FROM AGENCIES



Note: Pre EO 12866 period is January - September 1993 average
Note: EO 12866 period begins October 1993

[FR Doc. 94–11203 Filed 5–5–94; 4:10 pm]

BILLING CODE 3110–01–C

federal register

Tuesday
May 10, 1997

Part VII

Department of Agriculture

Cooperative State Research Service

Small Business Innovation Research Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Small Business Innovation Research Grants Program for Fiscal Year 1995; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law Number 99–591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Grants Program. This program will be administered by the Office of Grants and Program Systems, Cooperative State Research Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging participation of women-owned and socially and economically disadvantaged small business concerns in technological innovation.

The total amount expected to be available for Phase I of the SBIR Program in fiscal year 1995 is approximately $3,500,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 1, 1994. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture
8. Industrial Applications
9. Marketing and Trade

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR part 3403, as amended. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, as amended (7 CFR part 3015), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-free Workplace (Grants) (7 CFR part 3017), New Restrictions on Lobbying (7 CFR part 3018), and Managing Federal Credit Programs (7 CFR part 3) apply to this program. Copies of 7 CFR part 3403, 7 CFR part 3015, 7 CFR part 3017, 7 CFR part 3018, and 7 CFR part 3 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for fiscal year 1994 or who have recently requested placement on the list for fiscal year 1995 will automatically receive a copy of the fiscal year 1995 solicitation.

Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, telephone: (202) 401–5048.

Done at Washington, DC, this 4th day of May 1994.

William D. Carlson,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 94–11166 Filed 5–9–94; 8:45 am]

BILLING CODE 3410–22–M

federal register

Tuesday
May 10, 1994

Part VIII

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 58, et al.
Agency Reorganization of Analytical Testing Services; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 58, 91, 93, 94, 95, 98

[SD-94-002]

RIN 0581-AB24

Agency Reorganization of Analytical Testing Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) commodity laboratory testing programs under the AMS Science Division was established by a final rule effective August 1993. In order to implement the new and revised regulations, AMS codified the Agency reorganization of analytical testing services under a separate rule by consolidating and transferring functions from other Title 7 CFR parts related to analytical testing services to the AMS Science Division. This interim final rule reduces laboratory testing fees for certain dairy products based on various factors such as a decrease in minimum test times for certain products from one-half hour to one-quarter hour, a decrease in expenditures for making some test preparations, and a decreased number of procedural steps required for performing certain laboratory analyses. This rule also establishes additional tests for dairy products for incorporation into existing schedules with a $34.20 hourly rate. In addition, this interim final rule makes several technical corrections and revisions.

DATES: This interim final rule is effective May 10, 1994; comments must be received on or before June 9, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to William J. Franks, Jr., Acting Director, Science Division, Agricultural Marketing Service, U. S. Department of Agriculture, P.O. Box 96456, room 3507 South Agriculture Building, Washington, DC 20090-6456. Facsimile (202) 720-6496.

Comments should reference the docket number and date and page numbers of this issue of the **Federal Register**. All written submissions pursuant to this rule will be made available for public inspection in the above office, between the hours of 9 a.m., and 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jon E. McNeal, Chief, Technical Services Branch, Science Division, Agricultural Marketing Service, U. S. Department of Agriculture, P.O. Box 96456, room 3517 South Agriculture Building, Washington, DC 20090-6456, Telephone (202) 720-2216.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12866 and Executive Order 12778

The Department has determined that this rule is not significant for purposes of Executive Order 12866 and it therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

II. Effect on Small Entities

The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (U.S.C. 601-612). The fees provided for in this rule reflect a minimal change in the costs currently borne by those entities which utilize certain laboratory services. The rule is designed to provide usual and reasonable fees for laboratory testing that are consistent with costs in time and resources to ensure adequate funding of the laboratory operations of the Science Division.

III. Background

On August 9, 1993, the agency reorganization of analytical testing under the Science Division and schedules of laboratory fees were published as a final rule in the **Federal Register** (58 FR 42408-42448) after receiving only one comment on the proposal. The fee schedules became effective immediately and were devised to have a single fee for the same test rather than assessing separate laboratory fees for different commodities and their products.

The dairy product laboratory fees for 35 tests or combination of tests that were listed in former regulations at 7 CFR 58.44 were increased by large percentages in the final rule. As a consequence, the dairy industry has complained that it is burdened with testing fees that cannot be assimilated into current purchasing contracts.

The single test laboratory fees for other commodity products did not change as significantly as test fees for dairy products. Prior to the final rule implementation, the dairy testing fees had been revised only slightly since the Dairy Division's rule in November 2, 1977 (42 FR 57301). The heavy volume of laboratory testing of dairy products in the early 1980's associated with Commodity Credit Corporation purchases diminished the need for periodic fee increases. However, the workload for laboratory testing of dairy products was reduced greatly beginning in 1986. In addition, the dairy testing fees were carried over and not revised from 1988 to 1993 while the Agency prepared a consolidated regulation for laboratory services within the Science Division and updated fees. Consequently, when the new fees were placed in effect, the dairy industry faced very substantial increases in testing fees. In response to the various objections generated among dairy processors and after further consideration of the matter, the agency temporarily restored the dairy testing fees to the applicable charges and hourly rate in effect on April 17, 1989.

In order to address the fee situation in a more coherent fashion, and to reduce costs to the industry, this interim rule readjusts fees, makes substitutions for certain tests, and contains other changes. Laboratory fees are established in a variety of ways in private and government laboratories. The readjustment of fees or substitutions for some analyses contained in the original fee schedules concerning 18 laboratory tests for dairy products were developed by reviewing and considering comparable available commercial laboratory fees. Most commercial laboratory lists of available laboratory analyses and corresponding fees for the tests are not designated with a specific commodity or product in mind.

IV. Change in Minimum Laboratory Fee

The minimum laboratory testing fee is being reduced from $17.10 to $8.55. The original minimum fee published on August 9, 1993, is based on current commodity product grading and inspection fees which specify a minimum one-half hour charge. However, some laboratory analyses applying to dairy product grading can be performed within a one-quarter hour and therefore would incur a corresponding $8.55 fee. The laboratory tests with a revised one-quarter hour charge are listed as follows: (1) titratable acidity, (2) density or specific gravity,

(3) scorched particles, and (4) net weight per can. Analysis time includes the allotted periods for sample tracking, reagent and standard solution preparation, sample preparation and laboratory bench analysis, cleanup, analytical result determination and interpretation with supervisory review, and the time for issuing a test report. The individual laboratory test fee determinations in this rule must necessarily include the length of time spent on tests performed for quality control, quality assurance, and proficiency testing.

V. Reduction in Dairy Testing Fees Based on Varying Complexity of Standard Analytical Methods for Different Commodities

The schedules of consolidated fees and charges for the single analyte testings were established in the rule published on August 9, 1993, based on the reasoning that there is, in general, comparable complexity of procedures and similar methodology for different commodities and their products. However, some standard methods or tests for the examination of dairy products have a dissimilar process for testing a given analyte, shorter procedures, decreased complexity of reagent and materials preparation, reduced analyst manipulations with samples and their derivatives, fewer measurements, and/or a lower degree of interpretation required. Consequently, these dairy tests are less complex and would justify a reduction of the fee. The laboratory fees for dairy products that are lowered in this interim final rule because the tests are less complex are as follows: (1) fat (dairy products), (2) salt titration, (3) peroxide value, (4) free fatty acid, (5) solubility index, (6) whey protein nitrogen, (7) vitamin A (dry milk products), (8) alkalinity of ash, (9) antibiotic, (10) complete Kohman, (11) direct microscopic clump count, (12) proteolytic count, (13) coliform, and (14) *Salmonella* Step 1.

The fee schedule in Table 1 of this rule has a fee of $17.10 or a one-half hour charge for fat in dairy products (except cheese) added to the schedule since the fat analysis requires only two extractions. Fat analysis of cheese requires three or more extractions and therefore is set at $25.65. Table 1 also has a one-half hour charge for the salt or chloride titration of dairy products, such as butter and cheese. This is a reduction from the three-quarter hour charge for other commodities. The salt analysis for cheese by the potentiometric method and the analysis for butter does not require a digestion step.

The fee for the peroxide value determination in Table 2 has been reduced from a one and one-half hour charge to a three-quarter hour charge. The fee for free fatty acid analysis has been reduced from a three-quarter hour to a one-half hour charge. The peroxide value and free fatty acid test fee revisions are based on time and motion studies of the average times required to perform the individual dairy tests that the fees prior to 1993 were based on, that is, 1 hour for the peroxide value test and 27 minutes for the free fatty acid test. The revised peroxide value and free fatty acid test fees would be applicable to all commodities. However, the more complex AOAC gas chromatographic (gc) method for the determination of fatty acid profile in Table 2 would require an increase in analyst time to 4 hours to perform.

The fee for the solubility index determination for dry milk products in Table 3 has been reduced from a three-quarter hour to a one-half hour charge. The method has relatively few manual procedures to follow with no reagents or standard solutions to prepare.

The fee for the determination of whey protein nitrogen (WPN) in milk products in Table 3 has been reduced from a two and one-half hour charge to a three-quarter hour charge. The fee of $85.50 for WPN was based on a different method and more elaborate manual procedures than are actually employed for official dairy testing. The original two and one-half hour charge was based on the consideration that undenatured whey protein could be determined from the Kjeldahl analysis of noncasein filtrate and of filtrate obtained by treating milk with trichloroacetic acid solution. However, the whey protein nitrogen content is determined routinely in a different manner by comparing the optical density of a properly prepared sample against a standard curve of low and high heat reference powders from the American Dairy Products Institute (Chicago, Illinois) with known WPN contents.

The fee for the determination of vitamin A in Table 3 has been reduced from a five hour charge to a two and one-half hour charge. The original 5 hour analyst time frame was based on the consideration that the vitamin A test has both unstable reagents and standard solutions. Examination of Science Division records has revealed that 1,262 vitamin A tests had been conducted during Fiscal Year 1993, which is a relatively frequent occurrence of testing for one analyte. Hence, considerable analyst time could be saved on an average test time per sample basis since identical reagents and the same vitamin A standard and carotene standard curves could be used for a batch run of samples. The fee for the vitamin A determination for nonfat and instant dry milks in Table 3 has been reduced further to a one and one-quarter hour charge since the Carr-Price method is used and this analysis does not require eliminating carotenoids by alumina column chromatography, as the vitamin A procedures for other commodities require.

The fee for the determination of alkalinity of ash of dairy products in Table 3 has been reduced from a four hour charge to a one and one-half hour charge. This test fee of $136.80 was set by considering the time spend to monitor the sample ashing process by muffle furnace. The alkalinity of ash test fee is lowered since the ignition of sample to constant weight at 550 °C in the furnace does not normally require continuous observation by the analyst. Hence the analyst is usually free to perform other laboratory analyses during the interim time.

The antibiotic test for dairy products, that is newly inserted in Table 3, is a qualitative test where a positive or a negative response indicates the presence or absence, respectively, of antibiotics and other inhibitory substances. When the original time of four hours was estimated for the antibiotic test, it was based on a quantitative type of analysis which involves extensive procedures to derive the identity of a specific antibiotic including subsequent steps to determine its exact concentration in a commodity product. Therefore, Table 3 has a half-hour charge for the qualitative test for antibiotics, which is now applicable to dairy products. Table 3 continues to have a four hour charge for the quantitative determination of antibiotics, which is now applicable to other commodity products.

The fee for the complete Kohman testing of dairy products in Table 4 has been reduced from a three hour charge to a one hour charge. The complete Kohman analysis involves determining fat, moisture, salt and curd components of the dairy product usually designated at a one hour, a one-half hour, a three-quarter hour and a three-quarter hour charge respectively. The original charge for the Kohman analysis was set as if the four tests were performed separately to determine the full composition of the dairy product and the analysis charge was established on a combination fee basis. However, the complete composition of the dairy product by Kohman testing is actually determined by a series of interrelated analyses. Furthermore, the percentage of curd does not involve a laboratory test with

dairy products and it is obtained by the difference of 100 and the percentage sum total of moisture, fat, and salt.

The new three-quarter hour fee for direct microscopic clump count (DMCC) for dairy products in Table 5 covers the preparation of stained films of sample portions on a slide and the counting of bacterial organisms and clumps in six microscopic fields across the slide. Bacterial types in clusters or clumps, that is *Staphylococcus* spp. and *Micrococcus* spp., are counted as one bacterium. The bacterial direct microscopic count for other commodities is set at a slightly higher charge of one hour because the bacterial counting of stained sample films is done in an up and down fashion and a minimum of 20 microscopic fields are counted with up to 100 fields when a high quality product is tested.

The fee for the proteolytic count in Table 5 has been reduced from a one hour charge to a one-half hour charge. The proteolytic bacteria count analysis in cream or butter samples is rarely conducted. The fee in the rule published on August 9, 1993, was established by considering the extra time spent first to determine the specific identity of the proteolytic bacteria, such as *Pseudomonas* spp. However, the proteolytic bacteria count analysis requires making only a general differentiation and an enumeration based on the organism's ability to grow and to bring about the liquefaction of the milk curd. The proteolytic count is essentially an aerobic standard plate count, that has a one-half hour charge, with just one additional procedural step where the agar surface is flooded with an acid solution before counting.

The new one-half hour fee for coliform plate count analysis of dairy products in Table 5 is established separately from the three-quarter hour fee for coliform plate count analysis in other commodities. The dry rehydratable film method is used for the coliform analysis of dairy products. This method involves a considerable reduction in procedural steps and analyst time compared to the coliform plate count analysis associated with other commodities and their products. First, the violet red bile coliform count film plates come completely prepared from the manufacturer. For this reason, there is a time savings over the other coliform methods that involve the preparation and the tempering of Violet Red Bile (VRB) agar. In addition, the dry rehydratable film method for coliform bacteria does not require a media cover layer to be placed over the solidified VRB agar. Furthermore, the coliform organisms of dairy products are identifiable and confirmed on petrifilm coliform count plates with red colonies having gas bubbles trapped in the VRB agar. Accordingly, the additional use of brilliant green lactose bile broth is not needed to confirm the presence of coliforms with the dairy product coliform determination, as it is needed with the method for other products.

The new one hour fee for *Salmonella* step 1 analysis of dairy products in Table 5 is established separately from the one and one-half hour fee for *Salmonella* step 1 analysis in other commodities. The time savings for the *Salmonella* determination of dairy products results from the reduction of handling by the analyst and the decrease number of stages required for the sample pre-enrichment procedures. The dairy product serves as its own source of nutrients during the pre-enrichment process, so the dairy sample is weighed directly into a container of a sterile diluent. In contrast, other commodities need the preparation of sterile lactose broth or other nutrient broth for the *Salmonella* pre-enrichment process. Furthermore, other commodity product samples require a pH measurement and a pH adjustment of a sample with non-selective media mixture before incubation.

The revised schedule of fees has been tailored to more precisely reflect the costs of some of the laboratory services provided. The reduced costs and additional tests for dairy products are based on a re-evaluation of the dairy testing program and on an effort by the agency to charge fees which are lower but still attempt as nearly as practicable to cover the cost of the services provided.

VI. Additional Changes to the Final Rule

Since publication of the final rule, some other areas requiring correction or clarification have arisen. The August 9, 1993 final rule document 93–18212 beginning on page 42408 inadvertently had the wrong regulation identifier number (RIN) that was assigned by OMB. The document RIN 0581–AA51 is amended to RIN 0581–AA85.

Section 58.101 of 7 CFR part 58 should not have been amended in the final rule. In addition, the rule removed paragraph e(5)(ii) of § 58.126 of part 58 that should have been retained and revised. The corrections are needed in this interim final rule to return the authority for the supervision of the existing dairy plant laboratories to the Dairy Resident Graders. The AMS Science Division provides independent auditing of laboratory analysis function for the AMS Dairy Division.

Sections of 7 CFR parts 91, 93, 94 and 98 are corrected to provide an updated listing of Science Division addresses for offices and laboratories.

The definition of "complete Kohman analysis" is amended in § 95.2 to indicate that the full composition analysis of butter and margarine also includes the curd determination. Furthermore, the complete Kohman analysis determines the fat, moisture, salt and curd of the butter and margarine with a series of interrelated analyses.

VII. Interim Final Rule Justification

Pursuant to 5 U.S.C. 553, it is found and determined, upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) The AMS Science Division needs to have sufficient funds to pay its dairy product laboratory operating expenses which are incurred on a continuous basis.

(2) The dairy industry is aware of this action. Furthermore, the dairy producers desire an expeditious answer concerning the extent of the reduction of the Division's dairy testing fees. They need to formulate their budgets early during the start of the 1994 calendar year and make decisions where their laboratory testing service needs could best be met.

(3) The dairy processors need laboratory cost information in order to offer their bids to the Kansas City Commodity Office of the Agricultural Stabilization and Conservation Service prior to receiving consideration to process Commodity Credit Corporation-owned bulk dairy goods before the next shipping cycle, July 1, through December 31, 1994.

(4) This interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

Lists of Subjects

7 CFR Part 58

Food grades and standards, Dairy products, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Fees and charges, Laboratories.

7 CFR Part 93

Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetable.

7 CFR Part 94

Eggs and egg products, Laboratories, Poultry and poultry products.

7 CFR Part 95

Dairy products, Laboratories, Milk.

7 CFR Part 98

Meat and meat products, Laboratories.

For the reasons set forth in the preamble, AMS amends 7 CFR parts 58, 91, 93, 94, 95 and 98 as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

§ 58.101 [Amended]

2. In section 58.101, paragraph (c) is amended by removing "the AMS Science Division Director" (the first time it appears) and adding in its place "the Administrator".

3. Section 58.126 is amended by redesignating paragraph (e)(5)(ii) as paragraph (e)(5)(iii) and adding a new paragraph (e)(5)(ii) to read as follows:

§ 58.126 Buildings.

* * * * *

(e) * * *

(5) * * *

(ii) Approved laboratories shall be supervised by the USDA resident inspector in all aspects of official testing and reporting results. Plant laboratory personnel in such plants may be licensed by the USDA to perform official duties. The AMS Science Division will provide independent auditing of laboratory analysis functions.

* * * * *

PART 91—SERVICES AND GENERAL INFORMATION

1. The authority citation for part 91 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

2. In § 91.5, paragraph (a)(1)(ii) is revised to read as set forth below.

3. In § 91.5, paragraph (a)(2)(i) is revised to read as set forth below.

4. In § 91.5, paragraph (a)(2)(iii) is revised to read as set forth below.

5. In section 91.5, paragraph (a)(3) is amended by removing "Science Division Citrus Laboratory, 111 Third Street, SW., suite 211, Winter Haven, FL 33880" and adding in its place "Science Division Citrus Laboratory, 98 Third Street, SW, Winter Haven, FL 33880".

6. In section 91.5, paragraph (b) is amended by removing "Director, Science Division, Agricultural Marketing Service, United States Department of Agriculture (USDA), P.O. Box 96456, Washington, DC 20090–6456" and adding in its place "Director, Science Division, Agricultural Marketing Service, United States Department of Agriculture (USDA), P.O. Box 96456, Washington, DC 20090–6456".

§ 91.5 Where Services are offered.

(a) * * *

(1) * * *

(ii) USDA, AMS, SD, Eastern Laboratory, 2311–B Aberdeen Boulevard, Gastonia, NC 28054.

(2) * * *

(i) USDA, AMS, SD, 3119 Wesley Way, suite 6, Dothan, AL 36301, Mail: P.O. Box 1368, Dothan, AL 36302.

* * * * *

(iii) USDA, AMS, SD, 1211 Schley Avenue, Albany, GA 31707.

* * * * *

7. In section 91.37, paragraph (a) introductory text is amended by removing "one-half hour" in the sixth sentence and adding in its place "one-quarter hour".

8. In § 91.37, paragraph (a), Tables 1, 2, 3, 4 and 5 are revised to read as follows:

§ 91.37 Fees for laboratory testing, analysis, and other services.

(a) * * *

General Schedules of Fees for Official Laboratory Test Services Performed at the AMS Science Division Laboratories for Processed Commodity Products

TABLE 1.—SINGLE TEST TIMES AND LABORATORY FEES FOR PROXIMATE ANALYSES

Type of analysis	Hours for single test	List fee
Ammonia, Ion Selective Electrode	2.25	$76.95
Ash, Total	1	34.20
Ash, Acid Insoluble	1.5	51.30
Chloride, Salt Titration (Dairy)	0.5	17.10
Fat, Acid Hydrolysis	1	34.20
Fat (Cheese and Related Products)	0.75	25.65
Fat (Dairy Products except Cheese)	0.5	17.10
Fat, Ether Extraction	1	34.20
Fat, Microwave—Solvent Extraction	1	34.20
Fat, Specific Gravity	1	34.20
Fiber, Crude	2	68.40
Moisture, Distillation	1	34.20
Moisture, Karl Fischer	1.5	51.30
Moisture, Oven	0.5	17.10
Protein, Kjeldahl	2	68.40
Salt, Back Titration	0.75	25.65
Salt, Potentiometric	0.5	17.10

TABLE 2.—SINGLE TEST TIMES AND LABORATORY FEES FOR LIPID RELATED ANALYSES

Type of Analysis	Hours for single test	List fee
Acid Degree Value (Dairy)	1	$34.20
Acidity, Titratable	0.25	8.55
Carotene, Spectrophotometric	2.5	85.50
Catalase Test	0.5	17.10
Cholesterol [1]	5	171.00
Color (Honey)	0.5	17.10
Color, NEPA (Eggs)	1	34.20
Consistency, Bostwick (Cooked)	0.5	17.10
Consistency, Bostwick (Uncooked)	0.5	17.10
Density (Specific Gravity)	0.25	8.55
Dispersibility (Moates-Dabbah Method)	0.5	17.10
Fat Stability,[2] AOM	1	34.20
Fatty Acid Profile (AOAC–GC method)	4	136.80
Flash Point Test only	2	68.40
Free fatty acids	0.5	17.10
Meltability (Process Cheese)	0.5	17.10
Peroxidase Test	0.5	17.10
Peroxide Value	0.75	25.65
Smoke Point Test only	2	68.40
Smoke Point and Flash Point	3.5	119.70
Solids, Total (Oven Drying)	0.5	17.10
Soluble Solids, Refractometer	0.5	17.10

[1] Moisture and fat analyses are required to be analyzed at an additional cost as prerequisites to the cholesterol test.
[2] Peroxide value analysis is required as a prerequisite to the fat stability test at the additional fee.

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)

Type of analysis	Hours for single test	List fee
Aflatoxin, (Dairy, Eggs)	3.5	$119.70
Alar or Daminozide Residue	6	205.20
Amitraz Residue, GLC	6	205.20
Alcohol (Qualitative)	2	68.40
Alkalinity of Ash	1.5	51.30
Antibiotic, Qualitative [1] (Dairy)	0.5	17.10
Antibiotic, Quantitative	4	136.80
Ascorbates (Qualitative—Meats)	0.5	17.10
Ascorbic Acid, Titration	1	34.20
Ascorbic Acid, Spectrophotometric	1	34.20
Benzene, Residual	2	68.40
Brix, Direct Percent Sucrose	0.5	17.10
Brix, Dilution	0.5	17.10
Butylated Hydroxyanisole (BHA)	1.5	51.30
Butylated Hydroxytoluene (BHT)	1.5	51.30
Caffeine, Micro Bailey-Andrew	1.5	51.30
Caffeine, Spectrophotometric	1	34.20
Calcium	1.5	51.30
Citric Acid, GLC or HPLC	1.5	51.30
Chlorinated Hydrocarbons:		
Pesticides and Industrial Chemicals—		
Initial Screen	4	136.80
Second Column Confirmation of Analyte	1	34.20
Confirmation on Mass Spectrometer	2	68.40
Dextrin (Qualitative)	0.5	17.10
Dextrin (Quantitative)	3	102.60
Filth, Heavy (Dairy)	2.5	85.50
Filth, Heavy (Eggs)	4	136.80
Filth, Light (Eggs)	2.5	85.50
Filth, Light and Heavy (Eggs Extraneous)	6	205.20
Flavor	0.75	25.65
Fumigants:		
Initial Screen—		
Dibromochloropropane (DBCP)	1	34.20
Ethylene Dibromide	1	34.20
Methyl Bromide	1	34.20
Confirmation on Mass Spectrometer—Each individual fumigant residue	2	68.40
Glucose (Qualitative)	0.75	25.65
Glucose (Quantitative)	1.75	59.85
Glycerol (Quantitative)	3	102.60

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

Type of analysis	Hours for single test	List fee
Gums	3	102.60
High Sucrose Content or Avasucrol—Percent Sucrose (Holland Eggs)	4	136.80
Hydrogen Ion Activity, pH	0.5	17.10
Mercury, Cold Vapor AA	2.5	85.50
Metals—Other Than Mercury, Each Metal	2	68.40
Monosodium Dihydrogen Phosphate	4	136.80
Monosodium Glutamate	4	136.80
Nitrites (Qualitative)	0.5	17.10
Nitrites (Quantitative)	3	102.60
Oxygen	0.5	17.10
Palatability and Odor:		
First Sample	0.75	25.65
Each Additional Sample	0.5	17.10
Phosphatase, Residual	1	34.20
Phosphorus	2	68.40
Propylene Glycol, Codistillation: (Qualitative)	2	68.40
Pyrethrin Residue (Dairy)	4	136.80
Scorched Particles	0.25	8.55
Sodium, Potentiometric	1	34.20
Sodium Benzoate, HPLC	1.5	51.30
Sodium Lauryl Sulfate (SLS)	8	273.60
Sodium Silicoaluminate (Zeolex)	2	68.40
Solubility Index	0.5	17.10
Starch, Direct Acid Hydrolysis	3	102.60
Sugar, Polarimetric Methods	1	34.20
Sugar Profile, HPLC—This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose:		
One type sugar from HPLC profile	3	102.60
Each additional type sugar	0.5	17.10
Sugars, Non-Reducing	3	102.60
Sugars, Total as Invert	2	68.40
Sulfites (Qualitative)	0.75	25.65
Sulfur Dioxide, Direct Titration	1	34.20
Sulfur Dioxide, Monier-Williams	1.5	51.30
Toluene, Residual	2	68.40
Triethyl Citrate, GC (Quantitative)	1	34.20
Vitamin A	2.5	85.50
Vitamin A, Carr-Price (Dry Milk)	1.25	42.75
Vitamin D, HPLC (Vitamins D_2 and D_3)	8.5	290.70
Whey Protein Nitrogen	0.75	25.65
Xanthydrol Test For Urea	1.5	51.30
This is an optional test to the extraneous materials isolation test.		

[1] Disc Assay Method.

TABLE 4.—SINGLE TEST TIMES AND LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES

Type of analysis	Hours for single test	List fee
Available Carbon Dioxide (Baking Powders)	4	$136.80
Complete Kohman Analysis (Dairy)	1	34.20
Jelly Strength (Bloom)	2.5	85.50
Methyl Anthranilate	1	34.20
Grape Juice Absorbency Ratio	0.5	17.10
Net Weight (Per Can)	0.25	8.55
Non-Volatile Methylene Chloride Extract	2.5	85.50
Particle Size (Ether Wash)	0.5	17.10
Potassium Iodide (Table Salt)	1.5	51.30
Quinic Acid (Cranberry Juice)	1.75	59.85
Sieve or Particle Size	0.5	17.10
Water Activity	4	136.80
Water Insoluble Inorganic Residues (WIIR)	2	68.40
Yellow Onion Test	0.75	25.65

TABLE 5.—SINGLE TEST TIMES AND LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES

Type of analysis	Hours for single test	List fee
Aerobic (Standard) Plate Count	0.5	$17.10

TABLE 5.—SINGLE TEST TIMES AND LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES—Continued

Type of analysis	Hours for single test	List fee
Anaerobic Bacterial Plate Count	0.75	25.65
Bacterial Direct Microscopic Count	1	34.20
Campylobacter jejuni	4	136.80
Coliform Plate Count (Dairy Products)	0.5	17.10
Coliform Plate Count, Violet Red Bile Agar:		
(Presumptive Coliform Plate Count)	0.75	25.65
Coliforms, Most Probable Number (MPN):[1]		
Step 1	0.75	25.65
Step 2	0.75	25.65
Direct Microscopic Clump Count, DMCC	0.75	25.65
E. coli, Presumptive MPN (Additional Fee)[2]	1.5	51.30
Enterococci Count	3	102.60
Listeria monocytogenes confirmation analysis:[3]		
Step 1	1.5	51.30
Step 2	1.5	51.30
Step 3 (Confirmation)	2.5	85.50
Proteolytic Count (Dairy)	0.5	17.10
Psychrotrophic Bacterial Plate Count	0.75	25.65
Salmonella (USDA Culture Method):[4]		
Step 1 (Dairy Products)	1	34.20
Step 1	1.5	51.30
Step 2	0.75	25.65
Step 3 (Confirmation)	1.5	51.30
Serological Typing (Optional)	2.5	85.50
Salmonella (Rapid Methods):[5]		
Step 1	2	68.40
Step 2	0.75	25.65
Step 3 (Confirmation)	1.5	51.30
Staphylococcus aureus, MPN:		
With Coagulase Positive Confirmation	1.75	59.85
Thermoduric Bacterial Plate Count	0.75	25.65
Yeast and Mold Count	0.5	17.10
Yeast and Mold Differential Plate Count	0.75	25.65

[1] Coliform MPN analysis may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.

[2] Step 1 of the coliform MPN analysis is a prerequisite for the performance of the presumptive *E.* coli test, Prior enrichment in lauryl sulfate tryptose broth is required for optimal recovery of *E.* coli from inoculated and incubated EC broth (*Escherichia* coli broth). The *E.* coli test is performed through growth on eosin methylene blue agar. The fee stated for *E.* coli analysis is a supplementary charge to step 1 of coliform test.

[3] *Listeria* monocytogenes test using the USDA method may be in three steps as follows: Step 1—isolation by University of Vermont modified (UVM) broth and Fraser's broth enrichments and selective plating with Modified Oxford (MOX) agar; Presumptive Step 2—typical colonies inoculated from Horse Blood into brain heart infusion (BHI) broth and check for characteristic motility; Confirmatory Step 3—culture from BHI broth with typical motility is inoculated into the seven biochemical medias, BHI agar for oxidase and catalase tests, Motility test medium, and Christie-Atkins-Munch-Peterson (CAMP) test.

Listeria monocytogenes test using the FDA method may be in three steps as follows: Step 1—isolation by trypticase soy broth with 0.6% yeast extract (TSB–YE) broth enrichment and selective plating with Modified McBrides agar and Lithium chloride Phenylethanol Moxalactam (LPM) agar; Presumptive Step 2—typical colonies inoculated to trypticase soy agar with yeast extract (TSA–YE) with sheep blood plates to check for hemolysis followed by inoculations to BHI broth and TSA–YE plates to check for characteristic motility, gram stain and catalase test; Confirmatory Step 3—culture from BHI broth with typical motility for wet mount is inoculated into the required 10 biochemical medias, Sulfide-Indole-Motility (SIM) medium, and the CAMP test. Serology is checked using growth from TSA–YE plates.

Both methods for *Listeria* determination have the equivalent time needed for each step.

[4] *Salmonella* test may be in three steps as follows: Step 1—growth through differential agars; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums. The serological typing of *Salmonella* is requested on occasion.

[5] *Salmonella* test may be in three steps as follows: Step 1—growth in enrichment broths and Elisa test or DNA hybridization system assay; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums.

* * * * *

PART 93—PROCESSED FRUITS AND VEGETABLES

1. The authority citation for part 93 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

§ 93.3 [Amended]

2. In § 93.3, paragraph (a) is amended by removing "Science Division Citrus Laboratory, 111 Third Street, SW, suite 211, Winter Haven, FL 33880" and adding in its place "Science Division Citrus Laboratory, 98 Third Street, SW, Winter Haven, FL 33880".

3. In § 93.102, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 93.102 Analyses available and locations of laboratories.

(a) * * *

(1) USDA, AMS, SD, 3119 Wesley Way, suite 6, Dothan, AL 36301, Mail: P.O. Box 1368, Dothan, AL 36302.

(2) USDA, AMS, SD, 1211 Schley Avenue, Albany, GA 31707.

* * * * *

PART 94—POULTRY AND EGG PRODUCTS

1. The authority citation for part 94 continues to read as follows:

Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056), Agricultural Marketing Act of 1946, secs. 202–208 as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

§ 94.3 [Amended]

2. In section 94.3, paragraph (e) is amended by removing "USDA, AMS, Science Division, Eastern Laboratory, 645 Cox Road, Gastonia, NC 28054" and adding in its place "USDA, AMS, Science Division, Eastern Laboratory, 2311–B Aberdeen Boulevard, Gastonia, NC 28054".

PART 95—PROCESSED DAIRY PRODUCTS

1. The authority citation for part 95 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

§ 95.2 [Amended]

2. In section 95.2, the definition for "Complete Kohman analysis" is revised to read as follows:

§ 95.2 Definitions.

* * * * *

Complete Kohman analysis. Full composition analysis used for moisture, fat, salt, and curd determinations in butter and margarine. A weighed portion is heated to drive off the moisture and then reweighed to determine the moisture content. The fat is extracted using ether, and the remaining solids are weighed to determine fat content. The solids are then dissolved, and the salt content is determined by titration with standard silver nitrate solution. The percentage of curd is obtained by the difference of 100 and the percentage sum total of moisture, fat, and salt.

* * * * *

PART 98—MEALS, READY-TO-EAT (MRE's), MEATS, AND MEAT PRODUCTS

1. The authority citation for part 98 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

2. In § 98.3, paragraph (b)(3) is revised to read as follows:

§ 98.3 Analyses performed and locations of laboratories.

* * * * *

(b) * * *

(3) USDA, AMS, SD, Eastern Laboratory, 2311–B Aberdeen Boulevard, Gastonia, NC 28054.

Dated: May 3, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–11167 Filed 5–9–94; 8:45 am]

BILLING CODE 3410–02–U

federal register

Tuesday
May 10, 1994

Part IX

Department of Education

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research, Technology-Related Assistance to Individuals With Disabilities Program for Fiscal Year 1994 and 1995, Applications for New Awards; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.224]

National Institute on Disability and Rehabilitation Research Notice Inviting Applications for New Awards for State Grants Under the Technology-Related Assistance to Individuals With Disabilities Program for Fiscal Year 1994

Purpose: The purpose of the State grants for technology-related assistance program is to assist States to develop and implement comprehensive statewide systems of consumer-responsive technology-related services for individuals With disabilities. NIDRR has conducted prior competitions under this program and 51 States and one territory have received grants. NIDRR is now inviting applications from the remaining State and territories. In preparing their applications, applicants are advised to respond to the statutory provisions of the Technology-Related Assistance for Individuals With Disabilities Act of 1988, as amended by Public Law 103–218, and the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994.

Eligible Applicants: Entities or individuals designated by the Governor as the lead agency under section 102(d)(1) of the Act are eligible to apply, provided they have not previously received a grant under this program. This applies to the State of Arizona and to four territories: Guam, Virgin Islands, Republic of Palau, and the Commonwealth of Northern Mariana Islands.

Deadline for Transmittal of Applications: June 24, 1994.

Deadline for Intergovernmental Review: August 24, 1994.

Applications Available: May 16, 1994.

Available Funds: $1,100,000.

Estimated Average Size of Awards: $500,000 per State; $150,000 per territory.

Estimated Number of Awards: 5.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Project Period: Development awards are made for a period of three years; at the end of the three years, grantees that can demonstrate significant progress may apply for an initial extension grant of two years and a second extension grant of up to five years.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75 (except § 75.618), 77, 79, 80 (except §§ 80.32(a) and 80.33(a)), 81, 82, 85, and 86. In addition, statutory provisions of Pub. L. 100–407, the Technology-Related Assistance for Individuals With Disabilities Act of 1988 as amended by Pub. L. 103–218, and the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994, apply to this program.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen additional points are added to this criterion for a possible total of 30 points.

For Further Information Contact: Carol Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 205–5666. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5479.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED BOARD), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

For Applications Contact: Dianne Villines, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 205–9141.

Program Authority: 29 U.S.C. 2211–2271.

Dated: May 4, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–11287 Filed 5–9–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
May 10, 1994

Part X

Environmental Protection Agency

40 CFR Parts 52 and 81
Air Quality Implementation Plans, CA;
Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FRL-4884-1]

Approval and Promulgation of Federal Implementation Plans; California—Sacramento and Ventura Ozone; South Coast Ozone and Carbon Monoxide; Sacramento Ozone Area Reclassification

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rulemaking; notice of hearing.

SUMMARY: EPA is making technical corrections to proposed federal implementation plans (FIPs) to attain the national ambient air quality standards (NAAQS) for ozone in the Sacramento and Ventura nonattainment areas, and for ozone and carbon monoxide in the South Coast nonattainment area. The corrections relate to the proposed "cap rules" for stationary and area sources and the Parking Cash Out program. EPA is also establishing FIP public hearing dates and locations in the three affected areas.

DATES: The deadline for written comments is August 31, 1994.

Public hearings will be held on July 18, July 20, and July 25, 1994, at 10 a.m. The Supplementary Information portion of this notice provides additional information on the public hearing.

ADDRESSES: Public hearings will be held in the South Coast, Ventura, and Sacramento, CA. See Supplementary Information.

Written comments on the proposed FIP and SIP promulgations must be received by EPA at the address below on or before the close of the public comment period. Comments should be submitted (in duplicate, if possible) to: EPA Air Docket Section, Attn: Docket No. A-94-09, Environmental Protection Agency (Mail Code—6102), Waterside Mall, Room M-1500, 401 M Street, S.W., Washington, DC 20460, (phone 202-260-7549).

Docket No. A-94-09, containing material relevant to this NPRM, is located at the above address. The docket is available for public inspection between 8:30 a.m. and 12 noon, and between 1:30 p.m. and 3:30 p.m. EPA may charge a reasonable fee for copying.

A copy of the docket is also available for review at: Regional Administrator, Attention: Office of Federal Planning (A-1-2), Air and Toxics Division, Environmental Protection Agency, Region, IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Interested persons may make an appointment with Ms. Virginia Petersen at (415) 774-1265, to inspect the docket of EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

Copies of this NPRM, the technical support document, and the regulatory impact analysis, are also available for review at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, California
Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, California
Sacramento Area Council of Governments, 3000 S Street, Suite 300, Sacramento, California
El Dorado County Air Pollution Control District, 2850 Fair Lane Court, Bldg. C, Placerville, California
Feather River Air Quality Management District, 463 Palora Avenue, Yuba City, California
Placer County Air Pollution Control District, 11464 B Avenue, Auburn, California
Yolo-Solano County Air Pollution Control District, 1947 Galileo Court, Suite 103, Davis, California
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California
South Coast Air Quality Management District, Colton Office, 851 S. Mt. Vernon Avenue, Colton, California
Southern California Association of Governments, 818 W. 7th Street, Los Angeles, California
Southern California Association of Governments, Inland Empire Office, 3600 Lime Street, Riverside, California
Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, California

Electronic Availability

This document is available May 10, 1994 as an electronic file on EPA's Technology Transfer Network (TTN). For 1200 bps or 2400 bps modems, use 919-541-5742; for 9600 bps use 919-541-1447. The FIP NPRM is under the Clean Air Act Amendments (CAAA) board, in a section for "Recently Signed Rules." users should check the initial CAAA announcement screen for updates on file availability. Because of its size, the FIP NPRM is divided into several pieces, and stored in the compressed "ZIP" archive format. The file name for this notice is "CALFIP12.ZIP". If you need help in accessing the system, call the systems operator by phone at (919) 541-5384 in Durham, North Carolina.

FOR FURTHER INFORMATION CONTACT:

For information on the California FIPs generally, the public hearing, and the "cap rules," call EPA's FIP Hotline (415) 744-1151, or Julia Barrow (415) 744-2434, at the Office of Federal Planning (A-1-2), Air and Toxics Division, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105-3901

For information on the Parking Cash Out program, call Jon Kessler, (202 260-3761, at the Office of Policy, Planning and Evaluation, U.S. EPA, 401 M Street, SW, Washington, DC 20460, EPA's FIP Hotline (313) 668-4361, or Jane Armstrong (313) 668-4471, at the EPA Office of Mobile Sources, Motor Vehicle and Fuels Emissions Laboratory 2565 Plymouth Road, Ann Arbor, Michigan, 48105

SUPPLEMENTARY INFORMATION:

I. Public Meetings

EPA will hold a public hearing in the South Coast at 10 a.m. on July 18, 1994, at the auditorium of the South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California; in Ventura at 10:00 a.m. on July 20, 1994, at the Ventura County Hall of Administration Building, Lower Plaza Assembly Room, 800 S. Victoria Avenue, Ventura, California; and in Sacramento at 10 a.m. on July 25, 1994, at the PERS Building, 400 P Street, Sacramento, California. In order to be considered for the final promulgation, public comments must be submitted orally at the public hearing or in writing to the Agency on or before August 31, 1994. Commenters may provide testimony on any part of the FIPs at any one of the hearing locations. Commenters need only testify at one of the hearing locations (e.g., it is sufficient to testify on the Sacramento FIP at the South Coast location).

Each of the three public hearing days will be conducted in three sessions beginning at 10:00 a.m., 2:00 p.m., and 7:00 p.m., with a lunch recess before the 2:00 p.m. and a dinner recess before the 7:00 p.m. sessions. Depending on the number of requests to testify, the hearing officer may impose a time limit of 5 to 10 minutes per commenter. Commenters are urged to bring a copy (multiple copies, if possible) of their full testimony for the hearing officer.

II. "Cap Rules"

EPA's proposed ozone FIPs for the Sacramento, Ventura, and South Coast areas of California include "cap rules" for certain stationary and area source categories. Cap rules to achieve reductions in volatile organic compounds (VOCs) are proposed for each area, and a cap rule for nitrogen oxides (NO_x) is proposed for Ventura.

See proposed rules 40 CFR 52.2952 (Sacramento VOC cap rule), 40 CFR 52.2953 (Ventura VOC cap rule), 40 CFR 52.2954 (South Coast VOC cap rule), and 40 CFR 52.2955 (Ventura NO_x cap rule).

The preamble discussion of these rules, in section III.C.5. of the NPRM, indicates that facilities with emissions equal to or greater than 2 tons per year will be subject to the exemption verification reporting requirements of the proposed rule, while facilities with emissions equal to or greater than 4 tons per year would be subject to the annual emission reduction requirements.

The proposed rules, however, mistakenly indicate that the reporting requirements apply to facilities with emissions greater than or equal to 4.5 kg (10 lbs) per day, and that the reduction requirements apply to facilities with emissions greater than or equal to 6.8 kg (15 lbs) per day.

Accordingly, in this notice EPA proposes to correct the applicability levels throughout the proposed VOC and NO_x cap rules, to make the rules consistent with EPA's intention, as reflected in the preamble to the NPRM. EPA proposes the following emendations to proposed 40 CFR 52.2952, 40 CFR 52.2953, 40 CFR 52.2954, and 40 CFR 52.2955:

The phrase "greater than or equal to 6.8 kg (15 lbs) during any one day" is revised to read as follows: "greater than or equal to 4 tons during any one year."

The phrase "less than 6.8 kg (15 lbs) during any one day, but greater than or equal to 4.5 kg (10 lbs) during any one day" is revised to read as follows: "less than 4 tons during any one year, but greater than or equal to 2 tons during any one year."

The phrase "greater than or equal to 4.5 kg (10 lbs) during any one day" is revised to read as follows: "greater than or equal to 2 tons during any one year."

In addition, the proposed NO_x cap rule for Ventura includes an incorrect reference to applicable quality assurance and quality control requirements for continuous emissions monitoring systems (CEMS). The first sentence of § 52.2955(a)(4)(i) is revised to read as follows: "Major sources as defined under the Clear Air Act shall install CEMS that meet the quality assurance and quality control requirements of appendix B of part 75 of this chapter."

III. Parking Cash Out

The proposed California FIPs also include a Parking Cash Out program, which is discussed in section III.D.2.g. of the preamble to the proposed rulemaking. The discussion below provides a corrected description of, and supplementary information on, the proposed Parking Cash Out program.

Parking Cash Out aims to reduce the incentive to drive to work via single-occupant mode that results when employers offer their employees free parking without other commute benefit options. A Parking Cash Out program gives employees the power to choose the form of their commute benefits. Under such a program, an employer who offers parking benefits would also offer the option of a cash allowance equal in value to the cost of the parking. Employers who offer Parking Cash Out give employees who rideshire or leave the car at home a powerful financial reward. By shifting dollars from parking to paychecks, a well designed Parking Cash Out program can produce emissions reductions without significant employer costs or new administrative burdens. And Parking Cash Out will assist employers in complying with the Employee Commute Option (ECO) programs in each of the FIP areas.

As part of his Climate Change Action Plan, President Clinton is proposing a change in the tax law to encourage employers who offer tax-exempt parking subsidies to their employees to offer a Parking Cash Out alternative. The goal of the FIP language is to incorporate Parking Cash Out for the FIP areas in a manner consistent with EPA authority. The FIP does not include a modification of the tax code, but merely aims to take credit for expected implementation of the President's proposal. It is expected that the President's Parking Cash Out legislative proposal will be acted on in the current session of Congress, that implementation will begin with the 1995 tax year.

Under the President's proposal, employers will for the first time be allowed to offer compensation and financial incentives such as cash and transit passes (Cash Out programs) as an option to tax-exempt parking benefits. Current law does not allow employers to offer Cash Out programs in lieu of tax-exempt parking benefits. This new flexibility will apply to all employers, regardless of the type of value of parking benefits offered.

Also, under the President's proposal, employers in certain circumstances will be required to offer a Cash Out program as an option to tax-exempt parking subsidies. As described in the Climate Change Action Plan, this Cash Out requirement will apply to employers who offer tax-exempt parking subsidies to their employees in the following circumstances.

It will apply to parking spaces currently leased by employers from a third party for which the lease allows a reduction in the number of spaces without penalty. It will also apply to all parking subject to new lease agreements made after the date of implementation.

The program will not apply to employer-owned parking, parking provided by firms with fewer than 25 employees, or parking spaces valued below a *de minimis* threshold. These exemptions ensure that the Cash Out requirement apples only where employers can easily shift expenditures from parking to paychecks. However, all employers will for the first time be allowed to offer Parking Cash Out options to tax-exempt parking benefits without incurring tax penalties. EPA will actively encourage employers in the FIP areas, even those exempt from the Cash Out requirement, to begin offering Cash Out programs.

The President's proposal also clarifies the tax status of parking and other commute benefits under a Cash Out program. Employees who opt for parking spaces will be unaffected by the change. Their parking will remain tax-exempt. Those employees who opt for cash may receive it as additional income, which is taxable, or as a transit pass, which is tax-free up to $60 per month.[1] Employers may withhold from the Cash Out offer a percentage sufficient to cover payroll taxes on cash taken and may deduct from corporate taxes the cost of parking and of a Cash Out program.

In the FIP areas, the President's proposal builds on and in many ways enhances the State of California's Cash Out program (referred to as AB 2109), which is administered by the California Air Resources Board. Begun in 1992, the California program requires a limited number of employers to offer a Parking Cash Out alternative to subsidized employee parking. AB 2109 also encourages local agencies to remove zoning requirements that force developers to build more parking than is necessary. The President's proposal eliminates a major impediment to the timely implementation of AB 2109—the federal tax penalties incurred by employers who implement Parking Cash Out programs under current tax law. Current law does not allow employers to offer Cash Out programs in lieu of tax-exempt parking benefits. As such, parking accompanied by Cash Out is disqualified from the existing income

[1] Cash taken as part of a Parking Cash Out program is subject to federal taxes calculated on the basis of gross income, such as FICA. However, California state law exempts Cash Out payments from State income tax.

tax exemption for employer-provided parking. California employers surveyed by EPA and by other organizations cite this as a barrier to low cost implementation of Parking Cash Out. The President's proposal would eliminate the tax penalties incurred by employers who offer Cash Out by allowing Cash Out as an option to tax-exempt parking subsidies.

Questions on the President's Parking Cash Out proposal should be directed to Jon Kessler of EPA's Office of Policy, Planning and Evaluation at (202) 260-3761.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements.

Dated: May 4, 1994.

Carol M. Browner,

Administrator.

Accordingly, part 52 of title 40 of the Code of Federal Regulations as proposed in the **Federal Register** ext 59 FR 23264 is proposed to be further amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—California Federal Implementation Plans

2. In §§ 52.2952, 52.2953, 52.2954, and 52.2955, the phrase "greater than or equal to 6.8 kg (15 lbs) during any one day" is revised to read "greater than or equal to 4 tons during any one year" everywhere it appears.

3. In §§ 52.2952, 52.2953, 52.2954, and 52.2955, the phrase "less than 6.8 kg (15 lbs) during any one day, but greater than or equal to 4.5 kg (10 lbs) during any one day" is revised to read "less than 4 tons during any one year, but greater than or equal to 2 tons during any one year" everywhere it appears.

4. In §§ 52.2952, 52.2953, 52.2954, and 52.2955, the phrase "greater than or equal to 4.5 kg (10 lbs) during any one day" is revised to read "greater than or equal to 2 tons during any one year" everywhere it appears.

5. The first sentence of paragraph 52.2955(a)(4)(i) is revised to read "Major sources as defined under the Clean Air Act shall install CEMS that meet the quality assurance and quality control requirements of appendix B of part 75 of this chapter."

[FR Doc. 94–11399 Filed 5–9–94; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
May 10, 1994

Part XI

The President

Proclamation 6684—National Walking Week, 1994

Proclamation 6685—Suspension of Entry of Haitians Barred From U.S. by U.N. Security Council Resolution 917 or Who Seek To Impede the Return of Democracy in Haiti

Executive Order 12914—Prohibiting Certain Transactions With Respect to Haiti

Federal Register
Vol. 59, No. 89
Tuesday, May 10, 1994

Presidential Documents

Title 3—

The President

Proclamation 6684 of May 6, 1994

National Walking Week, 1994

By the President of the United States of America

A Proclamation

We should all be aware of the benefits of regular physical activity; it can improve our energy levels while we expend calories. It can be as simple to incorporate into our daily lives as taking the stairs instead of the elevator, walking an extra block instead of riding, or taking a walk after a meal instead of taking a nap. Regular physical exercise can help to prevent and manage coronary heart disease, hypertension, noninsulin-dependent diabetes, osteoporosis, and mental health problems, such as depression and anxiety. And regular physical activity has been associated with lower rates of colon cancer and incidence of stroke.

Walking is an excellent form of light to moderate physical activity for most people. Walking for at least 30 minutes each day is a simple and inexpensive, yet very healthful, thing to do. It is a key element in Healthy People 2000, the Nation's prevention agenda, which envisions a healthier America by the year 2000. An increase in this important, positive health-related exercise can have a significant effect on the enhanced quality and life span of those who practice it. It is an invigorating form of self-care that can contribute to the reduction of preventable death, disease, and disability and to the containment of health care costs. It also provides a time for reflection and stress reduction.

Efforts to communicate with the American people about the health benefits of regular walking and to improve environments that make walking pleasurable and safe deserve the support of policy makers, legislators, and citizens throughout the country.

The Congress, by Senate Joint Resolution 146, has designated May 1, 1994, through May 7, 1994, as "National Walking Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1, 1994, through May 7, 1994, as National Walking Week. I invite the Governors of the 50 States and the appropriate officials of all other areas under the jurisdiction of the United States to issue similar proclamations. I also encourage the American people to join with health and recreation professionals, private voluntary associations, and other concerned organizations in observing this occasion with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth 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 J. Clinton

[FR Doc. 94–11544
Filed 5–9–94; 12:08 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6685 of May 7, 1994

Suspension of Entry of Aliens Whose Entry is Barred Under United Nations Security Council Resolution 917 or Who Formulate, Implement, or Benefit from Policies that are Impeding the Negotiations Seeking the Return to Constitutional Rule in Haiti

By the President of the United States of America

A Proclamation

In light of the political crisis in Haiti resulting from the expulsion from Haiti of President Aristide and the constitutional government, United Nations Security Council Resolution 917, and the overriding interest of the United States in the restoration of democracy to Haiti, I have determined that it is in the interests of the United States to restrict the entry to the United States of: (1) all aliens described in paragraph 3 of United Nations Security Council Resolution 917; and (2) all other aliens who formulate, implement, or benefit from policies that impede the progress of the negotiations designed to restore constitutional government to Haiti and their immediate families.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the powers vested in me as President by the Constitution and laws of the United States of America, including sections 212(f) and 215 of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f) and 1185), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens described in sections 1 and 2 of this proclamation would, except as provided for in sections 3 and 4 of this proclamation, be detrimental to the interests of the United States. I do therefore proclaim that:

Section 1. The immigrant and nonimmigrant entry into the United States of aliens described in paragraph 3 of United Nations Security Council Resolution 917 is hereby suspended. These aliens are:

(a) all officers of the Haitian military, including the police, and their immediate families;

(b) the major participants in the coup d'état of 1991 and in the illegal governments since the coup d'état, and their immediate families; and

(c) those employed by or acting on behalf of the Haitian military, and their immediate families.

Sec. 2. The immigrant and nonimmigrant entry into the United States of aliens who are not covered by section 1, but who nonetheless formulate, implement, or benefit from policies that impede the progress of the negotiations designed to restore constitutional government to Haiti, and their immediate families, is hereby suspended.

Sec. 3. Section 1 shall not apply with respect to any alien otherwise covered by section 1 where the entry of such alien has been approved as prescribed by paragraph 3 of United Nations Security Council Resolution 917.

Sec. 4. Section 2 shall not apply with respect to any alien otherwise covered by section 2 where the entry of such alien would not be contrary to the interests of the United States.

Sec. 5. Aliens covered by sections 1 through 4 shall be identified pursuant to procedures established by the Secretary of State, as authorized in section 8 below.

Sec. 6. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

Sec. 7. This proclamation shall take effect at 11:59 p.m., eastern daylight time on May 8, 1994, and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated.

Sec. 8. The Secretary of State shall have responsibility to implement this proclamation pursuant to procedures the Secretary may establish.

Sec. 9. Proclamation No. 6569 of June 3, 1993, is hereby revoked.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh 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 J. Clinton

[FR Doc. 94–11545
Filed 5–9–94; 12:09 pm]
Billing code 3195–01–F

Presidential Documents

Executive Order 12914 of May 7, 1994

Prohibiting Certain Transactions With Respect to Haiti

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, in view of United Nations Security Council Resolution 917 of May 6, 1994, and in order to take additional steps with respect to the actions and policies of the *de facto* regime in Haiti and the national emergency described and declared in Executive Order No. 12775, it is hereby ordered as follows:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses, which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, all funds and financial resources of:

(a) all officers of the Haitian military, including the police, and their immediate families;

(b) the major participants in the coup d'état in Haiti of 1991 and in the illegal governments since the coup d'état, and their immediate families; and

(c) those employed by or acting on behalf of the Haitian military, and their immediate families; that are or hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 2. The following are prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, authorizations, or licenses that may hereafter be issued pursuant to this order: (a) the granting of permission to any aircraft to take off from, land in, or overfly the territory of the United States, if the aircraft, as part of the same flight or as a continuation of that flight, is destined to land in or has taken off from the territory of Haiti, with the exception of regularly scheduled commercial passenger flights; (b) any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 3. The definitions contained in section 3 of Executive Order No. 12779 apply to the terms used in this order.

Sec. 4. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act and the United Nations Participation Act, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate

measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the effective date of this order.

Sec. 5. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 6.

(a) This order shall take effect at 11:59 p.m., eastern daylight time on May 8, 1994.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
May 7, 1994.

[FR Doc. 94–11547
Filed 5–9–94; 12:21 pm]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 59, No. 89

Tuesday, May 10, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, MAY

22491–22722.....2
22723–22950.....3
22951–23118.....4
23119–23610.....5
23611–23788.....6
23789–24028.....9
24029–24340.....10

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6569 (Amended by Proc. 6685).....24337
6679.....22955
6680.....22957
6681.....22959
6682.....23611
6683.....24027
6684.....24335
6685.....24337
12779 (See EO 12914).....24339
12914.....24339

Administrative Orders:
Memorandums:
April 29, 1994.....22951
April 29, 1994.....22953

Executive Orders:
12582 (Revoked by EO 12913).....23115
12878 (Amended by EO 12912).....22949
12912.....22949
12913.....23115

5 CFR

531.....24029
890.....24030

Proposed Rules:
Ch. XIV.....22537
890.....24062

7 CFR

58.....24318
91.....24318
93.....24318
94.....24318
95.....24318
98.....24318
210.....23613
220.....23613
271.....22723
272.....22723
273.....22723
301.....22491
723.....22723
1033.....24030
1036.....24030
1049.....24030
1240.....22492, 24217
1413.....22494, 22495
1427.....22494, 22495
1434.....23789
1464.....22723
1941.....22961
1943.....22961
1945.....22961
1980.....23614

Proposed Rules:
Ch. VII.....22938
300.....22538
319.....22538
1468.....22546
1530.....23017
1823.....23018
1910.....23018
1941.....23018
1942.....23018
1943.....23018
1944.....22018
1945.....23018
1948.....23018
1951.....22548, 23018
1980.....23018, 23173
4285.....23804

8 CFR

210a.....24031

9 CFR

78.....22496
317.....24220
381.....24220

Proposed Rules:
50.....23810
77.....23810
92.....23810
381.....22554

10 CFR

12.....23119

Proposed Rules:
50.....23641
51.....23030
73.....23641
170.....24065
171.....24065

12 CFR

5.....22497
207.....23124
210.....22962
220.....23124
221.....23124
224.....23124
225.....22967
230.....24032
265.....22967
563b.....22725
575.....22725
608.....23615
615.....22735

Proposed Rules:
205.....23031
335.....22555
563b.....22764
575.....22764

13 CFR

121.....23131

14 CFR

23.....23095

29....22499
39....23132, 23133, 23135, 23136, 23138, 23139, 23142, 23143, 23144, 23146, 23148, 23150, 23615, 23792, 24034
71....22502, 22503, 22736, 22737, 22969, 22970, 23617, 23618, 23619, 23620, 23621, 24036, 24037, 24038
97....22738
Proposed Rules:
Ch. I....22565, 24092
25....22218, 22766
39....22565, 22769, 22771, 23031, 23174
71....22567, 22568, 22569, 22570, 23033, 23034, 23642, 24093
73....23644

15 CFR

7....22742
285....22742
290....22504

16 CFR

305....23623
Proposed Rules:
300....23645
301....23645
303....23646
309....24013
455....23647

17 CFR

30....22505, 22971
200....23794
Proposed Rules:
240....22773

18 CFR

284....22753, 23624

19 CFR

4....23794
123....23794
Proposed Rules:
101....23817

21 CFR

101....24039, 24232
520....22753
606....23636
660....23636
Proposed Rules:
73....23035
74....23055
168....23055
172....23055
173....23055
182....23055
184....23055
878....23036

24 CFR

92....22506
582....24252
583....24252
880....22754, 22916
881....22754, 22916
882....24252
883....22754, 22916
884....22916
886....22916

25 CFR

Proposed Rules:
Ch. I....23774

26 CFR

1....24039
25....23152
602....23152, 24039
Proposed Rules:
1....22773, 24094, 24095
31....24096

28 CFR

0....23637
527....23998

30 CFR

935....22507
Proposed Rules:
914....23176
915....23177
917....23649
950....22571

31 CFR

47....24047
601....22972

32 CFR

706....22755
Proposed Rules:
298....23649

33 CFR

117....23158
150....23095
165....23158, 24047, 24048
166....23774
Proposed Rules:
100....22573
165....23179
181....23651
402....23180

34 CFR

668....23095
Proposed Rules:
Ch. VI....22775, 22776
388....24000

36 CFR

1253....23637

37 CFR

251....23964
252....23964
253....23964
254....23964
255....23964
256....23964
257....23964
258....23964
259....23964
301....23964
302....23964
303....23964
304....23964
305....23964
306....23964
307....23964
308....23964
309....23964
310....23964
311....23964

38 CFR

21....24049, 24050

39 CFR

111....23038, 23158
265....22756

40 CFR

52....22757, 22973, 23164, 23167, 23796, 24054
60....22758, 22759
180....24055, 24057, 24059
185....23799, 24059
186....24059
712....22519
716....22519
Proposed Rules:
52....22776, 23264, 24096, 24096, 24330
59....22776
65....22795
80....22800
81....23264, 24330
165....22574
180....24100, 24101
300....23819
721....23041
745....23041

41 CFR

302–11....22519

42 CFR

Proposed Rules:
434....23820
435....23820

43 CFR

7041....23638
Proposed Rules:
11....23098

46 CFR

67....24060
Proposed Rules:
540....23182

47 CFR

1....22980
73....22995, 22996
Proposed Rules:
1....23042, 23183, 24103
73....22814, 23042, 23043, 23183, 23184
76....23183

48 CFR

217....22759
225....23169
533....22520
1804....23800
1816....22521
1831....22521
1842....23800
1843....23802
1852....22521, 23800
Proposed Rules:
32....23776
52....23776
1807....24104
1815....24104

49 CFR

571....22997
Proposed Rules:
571....23184, 23662
580....23186

50 CFR

217....23169
227....23169
301....22522
641....22760
651....22760
661....22999, 23013
663....23638
675....22762, 23172
Proposed Rules:
17....23824, 24106, 24112, 24117
36....23043
261....23095
262....23095
263....23095
267....23095
301....23664
642....23681
651....24118
671....23664
672....23044, 23664
675....23044, 23664
676....23664
677....23664

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List May 11, 1994

Public Laws

103d Congress, 2d Session, 1994

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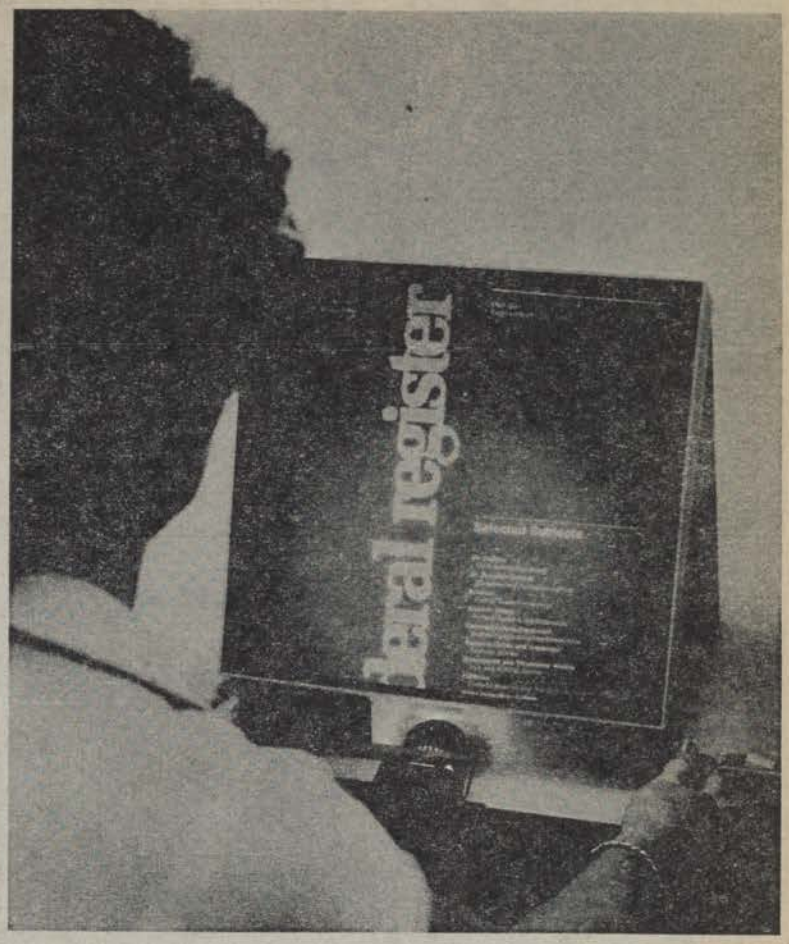

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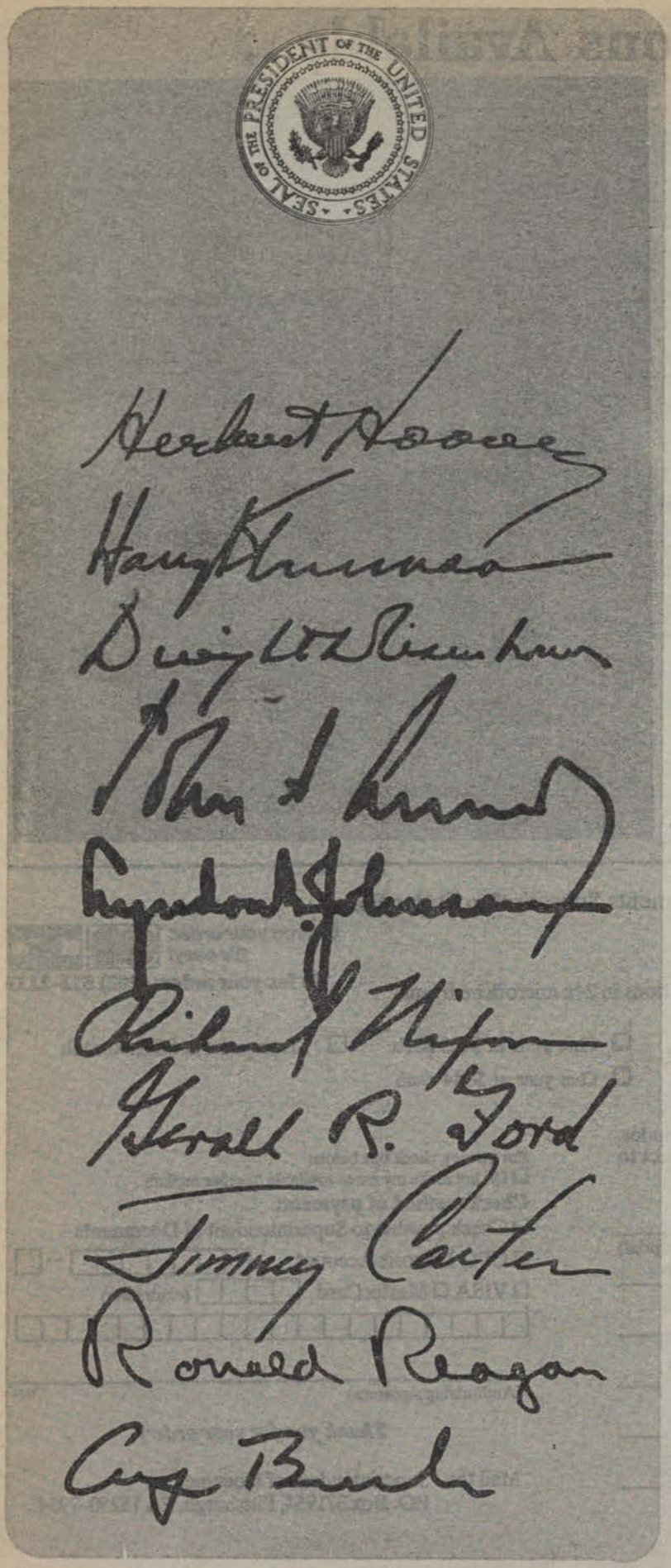

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