AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

5–11–94
Vol. 59 No. 90

federal register

Wednesday
May 11, 1994

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

5-11-94
Vol. 59 No. 90
Pages 24341-24630

federal register

Wednesday
May 11, 1994

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
(two briefings)

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WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

CHICAGO, IL

WHEN: June 9 at 9:00 am
WHERE: Ralph Metcalfe Federal Building Conference Room 328 77 West Jackson Blvd. Chicago, IL
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASW–39]

Revision of Class E Airspace: DeRidder, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Federal rule.

SUMMARY: This action revises the Class E airspace at Beauregard Parish Airport, DeRidder, LA. The establishment of an airport surveillance approach (ASR) standard instrument approach procedure (SIAP) has made this action necessary. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed for aircraft executing the approach. This action provides adequate Class E airspace to contain IFR operations for aircraft executing the SIAP's at Beauregard Parish Airport, DeRidder, LA.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Gregory L. Juro, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5591.

SUPPLEMENTARY INFORMATION:

History

On November 24, 1993, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E Airspace at Beauregard Parish Airport, DeRidder, LA, was published in the **Federal Register** (58 FR 62059). An ASR approach, a SIAP, was developed for the Beauregard Parish Airport, DeRidder, LA. The proposal was to revise the controlled airspace extending upward from 700 feet AGL to contain instrument flight rules (IFR) operations in controlled airspace during portions of the terminal operation and while transitioning between the en route and terminal environments.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Therefore the proposal is adopted with only editorial changes.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR 71) revises the Class E airspace located at DeRidder, LA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the SIAP's at Beauregard Parish Airport, DeRidder LA.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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), 1345(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

ASW LA E5 DeRidder, LA [Revised]

Beauregard Parish Airport, LA
(lat. 30°50′02″ N., long. 93°20′22″ W.)
Runway 36
(lat. 30°49′22″ N., long. 93°20′15″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7 mile radius of Beauregard Parish Airport and within 3.1-miles each side of the 179 bearing from the approach end of Runway 36 extending from the 6.7-mile radius to 6.9-miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on May 4, 1994.

Larry D. Gray,
Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–11405 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASW–05]

Establishment of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace areas at Roswell, NM; Enid, OK; and Lawton, OK. Presently, these areas are designated as Class D airspace when the associated control tower is in

operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: *Effective date:* 0901 u.t.c., June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 94–ASW–05, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3 p.m. Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 222–5595.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However after the review of the comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace areas at Roswell, NM; Enid, OK; and Lawton, OK. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Roswell, NM; Enid, OK; and Lawton, OK, when the control towers are closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at these airports when these control towers are closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991 (56 FR 65645), airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

* * * * *

ASW NM E2 Roswell, NM [New]

Roswell Industrial Air Center, NM
(lat. 33°18′05″ N., long. 104°31′50″ W.)

Within a 5-mile radius of Roswell Industrial Air Center. This Class E 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.

* * * * *

ASW OK E2 Enid, OK [New]

Enid, Vance AFB, OK
(lat. 36°20′23″ N., long. 97°54′58″ W.)
Enid, Woodring Municipal Airport, OK
(lat. 36°22′45″ N., long. 97°47′28″ W.)

Within a 5.1-mile radius of Vance AFB and within a 4.1-mile radius of Woodring Municipal Airport. This Class E 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.

* * * * *

ASW OK E2 Lawton, OK [New]

Lawton Municipal Airport, OK
(lat. 34°34′04″ N., long. 98°25′00″ W.)
Fort Sill, Henry Post AAF, OK
(lat. 34°39′00″ N., long. 98°24′07″ W.)

Within a 4.3-mile radius of Lawton Municipal Airport and within a 4-mile radius of Henry Post AAF excluding that airspace within Restricted Areas R–5601A and R–5601B when these restricted areas are activated. This Class E 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 Fort Worth, TX, on May 4, 1994.

James A. Caudle,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–11406 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASW–07]

Establishment of Class E Airspace Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace areas at Baton Rouge, LA; Lafayette, LA; Amarillo, TX; and Midland, TX. Presently, these areas are designated as Class C airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers located at these areas are closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: *Effective Date:* 0901 u.t.c., June 23, 1994.

Comment Date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 94–ASW–07, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9 AM and 3 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 222–5595.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the DATES section. However, after the review of any comments, and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace areas at Baton Rouge, LA; Lafayette, LA; Armarillo, TX; and Midland, TX. Currently, this airspace is designated as Class C when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Baton Rouge, LA; Lafayette, LA; Amarillo, TX; and Midland, TX, when the control towers are closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at these airports when these control towers are closed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

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

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ASW LA E2 Baton Rouge Metro, Ryan Field, LA [New]

Baton Rouge Metro, Ryan Field, LA
(lat. 30°32′00″ N., long. 91°08′58″ W.)

Within a 5-mile radius of the Baton Rouge Metro, Ryan Field. This Class E 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.

* * * * *

ASW LA E2 Lafayette Regional Airport, LA [New]

Lafayette Regional Airport, LA
(lat. 30°12′19″ N., long. 91°59′15″ W.)

Within a 5-mile radius of the Lafayette Regional Airport. This Class E 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.

* * * * *

ASW TX E2 Amarillo, TX [New]

Amarillo International Airport, TX
(lat. 35°13'10" N., long. 101°42'22" W.)

Within a 5-miles radius of Amarillo International Airport. This Class E 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.

* * * * *

ASW TX E2 Midland International Airport, TX [New]

Midland International Airport, TX
(lat. 31°56'33" N., long. 102°12'07" W.)

Within a 5-miles radius of Midland International Airport. This Class E 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 Forth Worth, TX, on May 4, 1994.

James A. Caudle,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94-11404 Filed 5-10-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-ANM-10]

Amendment to Class D Airspace; Aurora, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Aurora, Buckley ANG Base Airport, Colorado, Class D airspace. It amends the Class D airspace effective hours to conform with the control tower's hours of operation at the Buckley ANG Base, Colorado. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the terms "control zone" and "air traffic area," replacing them with the designation "Class D airspace." This amendment would bring publications up to date.

EFFECTIVE DATE: 0901 VTC, June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 94-ANM-10, 1601 Lind Avenue S.W., Renton, Washington 98055-4056; telephone number: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

On March 23, 1994, the FAA proposed to amend part 11 of the Federal Aviation Regulations to amend the Buckley ANG Base Class D airspace to incorporate "part-time" information into the rule (59 FR 13663; March 23, 1994). The information would provide pilots with notice that the Class D airspace would not be effective during certain periods of the day. No comments were received. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the terms "control zone" and "air traffic area," replacing them with the designation "Class D airspace."

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 8, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order. The coordinates are in North American Datum 83.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D airspace at the Buckley ANG Base, Aurora, Colorado, by adding information regarding the times the Class D airspace is effective. 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 FAA 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 Aurora, CO [Revised]

Aurora, Buckley ANG Base, CO
(lat. 39°42'36" N, long. 104°45'29" W)

That airspace extending upward from the surface to, but not including 7,500 feet MSL within a 4.4-mile radius of the Buckley ANG Base, excluding that airspace within the Denver, CO, Class B airspace subarea A and that airspace extending upward from the surface to and including the Denver Class B airspace, subarea C. This Class D airspace shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective dates and times thereafter, will be continuously published in the airport/facility directory.

* * * * *

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

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94-11401 Filed 5-10-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-ASW-04]

Modification of Class D Airspace and Establishment of Class E Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace areas at Fayetteville, AR; Fort Smith, AR; Lake Charles, LA; Monroe, LA; New Orleans, LA; Clovis, NM; Farmington, NM; Oklahoma City, OK; Beaumont, TX; Brownsville, TX; College Station, TX; Corpus Christi, TX; Laredo, TX; McAllen, TX; San Angelo, TX; San Antonio, TX; Waco, TX; and Wichita Falls, TX, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes

Class E airspace at these areas when the associated control tower is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed.

DATES: *Effective Date:*—0901 UTC, June 23, 1994.

Comment Date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 94–ASW–04, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 222–5595.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the DATES section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace areas at Fayetteville, AR; Fort Smith, AR; Lake Charles, LA; Monroe, LA; New Orleans, LA; Clovis, NM; Farmington, NM; Oklahoma City, OK; Beaumont, TX; Brownsville, TX; College Station, TX; Corpus Christi, TX; Laredo, TX; McAllen, TX; San Angelo, TX; San Antonio, TX; Waco, TX; and Wichita Falls, TX, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. This action also establishes Class E airspace during the hours the control tower is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000 and 6002, 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 (58 FR 36298; July 6, 1993). The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D and establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ASW AR D Fayetteville, AR [Revised]

Fayetteville, Drake Field, AR
(lat. 36°00′18″ N., long. 96°10′13″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.1-mile radius of Drake 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 times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW AR D Fort Smith, AR [Revised]

Fort Smith Municipal Airport, AR
(lat. 35°20′11″ N., long. 94°22′03″ W.)
Fort Smith VORTAC
(lat. 35°23′18″ N., long. 94°16′17″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 5-mile radius of Fort Smith Municipal Airport and within 1.3 miles each

side of the 240° radial of the Fort Smith VORTAC extending from the 5-mile radius to 5.6 miles southwest of the airport excluding that airspace within Restricted Area R–2401B. 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 times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA D Lake Charles, LA [Revised]

Lake Charles Regional Airport, LA
(lat. 30°07'33" N., long. 93°13'23" W.)
Lake Charles VORTAC
(lat. 30°08'29" N., long. 93°06'20" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of Lake Charles Airport and within 1.3 miles each side of the 256° radial of Lake Charles VORTAC extending from the 5-mile radius of 5.5 miles east of the airport. 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 times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA D Monroe, LA [Revised]

Monroe Regional Airport, LA
(lat. 32°30'40" N., long. 92°02'15" W.)
Monroe VORTAC
(lat. 32°31'01" N., long. 92°02'10" W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.2-mile radius of Monroe Regional Airport and within 1.8 miles each side of the 063° radial of the Monroe VORTAC extending from the 4.2-mile radius to 4.6 miles northeast of the airport and within 1.8 miles each side of the 217° radial of the Monroe VORTAC extending from the 4.2-mile radius to 4.6 miles southwest of the airport. 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 times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA D New Orleans Lakefront Airport, LA [Revised]

New Orleans Lakefront Airport, LA
(lat. 30°02'33" N., long. 90°01'41" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.4-mile radius of Lakefront Airport excluding that portion west of long. 90°04'04"W. This Class D airspace area is effective during the speciiic dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA D New Orleans NAS Alvin Callender Field, LA [Revised]

New Orleans NAS Alvin Callender Field, LA
(lat. 29°49'31" N., long. 90°02'06" W.)
Harvey VORTAC
(lat. 29°51'01" N., long. 90°00'10" W.)
New Orleans NAS RBN
(lat. 29°49'05" N., long. 90°02'12" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.7-mile radius of New Orleans NAS Alvin Callender Field and within 1.3 miles each side of the 228° radial of the Harvey VORTAC extending from the 4.7-mile radius to 5.6 miles southwest of the airport and within 1.3 miles each side of the 058° radial of the Harvey VORTAC extending from the 4.7-mile radius to 6 miles northeast of the airport and within 2 miles each side of the 198° bearing of the New Orleans NAS RBN extending from the 4.7-mile radius to 6.5 miles south of the airport excluding that airspace within the New Orleans, LA, Class B Airspace area. 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 times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW NM D Clovis, NM [Revised]

Clovis, Cannon AFB, NM
(lat. 34°22'58" N., long. 103°19'20" W.)
Cannon ILS Localizer
(lat. 34°22'24" N., long. 103°20'09" W.)
Cannon TACAN
(lat. 34°22'51" N., long. 103°19'21" W.)

That airspace extending upward from the surface to and including 6,800 feet MSL within a 4.6-mile radius of Cannon AFB and within 1 mile each side of the Cannon ILS localizer northeast course extending from the 4.6-mile radius to 4.8 miles northeast of the airport and within 1.3 miles each side of the 038° radial of the Cannon TACAN extending from the 4.6-mile radius to 4.8 miles northeast of the airport and within 1.3 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5 miles northwest of the airport. 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 times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW NM D Farmington, NM [Revised]

Farmington, Four Corners Regional Airport, NM
(lat. 36°44'31" N., long. 108°13'47" W.)
Four Corners Regional ILS Localizer
(lat. 36°44'28" N., long. 108°14'27" W.)

That airspace extending upward from the surface to and including 8,000 feet MSL within a 4.7-mile radius of Four Corners Regional Airport and within 1 mile each side of the Four Corners Regional ILS Localizer east course extending from the 4.7-mile radius to 5.4 miles east of the airport. 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 times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW OK D Oklahoma City Wiley Post Airport, OK [Revised]

Oklahoma City Wiley Post Airport, OK
(lat. 35°32'03" N., long. 97°38'50" W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.3-mile radius of Wiley Post Airport excluding that airspace within the Oklahoma City, Will Rogers Airport, OK, Class C airspace area. This Class D airspace area is effective during the specific dates and and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX D [Revised]

Beaumont-Port Arthur, Jefferson County Airport, TX
(lat. 29°57'03" N., long. 94°01'15" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of Jefferson County Airport. 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 times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX D Brownsville, TX [Revised]

Brownsville/South Padre Island International Airport, TX
(lat. 25°54'25" N., long. 97°25'34" W.)
Brownsville VORTAC
(lat. 25°55'27" N., long. 97°22'32" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Brownsville/South Padre Island International Airport and within 1.3 miles each side of the 071° radial of the Brownsville VORTAC extending from the 4.3-mile radius to 4.9 miles east of the airport excluding that airspace in Mexico. 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 times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX D College Station, TX [Revised]

College Station, Easterwood Field, TX
(lat. 30°35'19" N., long. 96°21'50" W.)
College Station VORTAC
(lat. 30°36'18" N., long. 96°25'14" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Easterwood Field and within 2.1 miles each side of the 108° radial of the College Station VORTAC extending from the 4.2-mile radius to 5.9 miles east of the airport and within 1.3 miles each side of the 288° radial of the College Station VORTAC extending from the 4.2-mile radius to 5.3 miles northwest of the airport. 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 times will thereafter be

continuously published in the Airport/Facility Directory.

* * * * *

ASW TX D Corpus Christi NAS, TX [Revised]

Corpus Christi NAS, TX
(lat. 27°42'01" N., long. 97°17'01" W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Corpus Christi NAS excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace area. 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 times will thereafter be continuously published in the Airport/Facility Director.

* * * * *

ASW TX D Laredo, TX [Revised]

Laredo International Airport, TX
(lat. 27°32'41" N., long. 99°27'41" W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.3-mile radius of Laredo International Airport excluding that airspace in Mexico. 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 times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX D McAllen, TX [Revised]

McAllen, Miller International Airport, TX
(lat. 26°10'32" N., long. 98°14'19" W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.1-mile radius of Miller International Airport excluding that airspace in Mexico. 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 times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX D San Angelo, TX [Revised]

San Angelo, Mathis Field, TX
(lat. 31°21'31" N., long. 100°29'45" W.)
San Angelo ILS Localizer
(lat. 31°21'49" N., long. 100°29'05" W.)
San Angelo VORTAC
(lat. 31°22'30" N., long. 100°27'18" W.)

That airspace extending upward from the surface to and including 4,400 feet MSL within a 4.1-mile radius of Mathis Field and within 1 mile each side of the San Angelo ILS localizer northeast course extending from the 4.1-mile radius to 5.3 miles northeast of the airport and within 1.3 miles each side of the 065° radial of the San Angelo VORTAC extending from the 4.1-mile radius to 6 miles northeast of the airport. 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.

* * * * *

ASW TX D San Antonio Randolph AFB, TX [Revised]

San Antonio, Randolph AFB, TX
(lat. 29°31'47" N., long. 98°16'44" W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.4-mile radius of Randolph AFB excluding that airspace within the San Antonio International Airport, TX, Class C airspace area. 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.

* * * * *

ASW TX D Waco, TX [Revised]

Waco Regional Airport, TX
(lat. 31°36'42" N.,long. 97°13'44" W.)
Waco, TSTI–Waco Airport, TX
(lat. 31°38'17" N.,long. 97°04'27" W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.5-mile radius of Waco Regional Airport and within a 4.4-mile radius of TSTI–Waco Airport. 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.

* * * * *

ASW TX D Wichita Falls, TX [Revised]

Wichita Falls, Sheppard AFB/Wichita Falls Municipal Airport, TX
(lat. 33°59'06" N.,long. 98°29'32" W.)
Wichita Falls ILS Localizer
(lat. 34°00'32" N.,long. 98°30'07" W.)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.9-mile radius of Sheppard AFB/Wichita Fall Municipal Airport and within 1 mile each side of the Wichita Falls ILS Localizer northwest course extending from the 4.9-mile radius to 5.7 miles northwest of the airport. 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 by continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ASW AR E2 Fayetteville, AR [New]

Fayetteville, Drake Field, AR
(lat. 36°00'18" N.,long. 94°10'13" W.)

Within a 4.1-mile radius of Drake Field. This Class E airspace area is effective during the specific dates and times established in advanced by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW AR E2 Forth Smith, AR [New]

Fort Smith Municipal Airport, AR
(lat. 35°20'11" N.,long. 94°22'03" W.)
Fort Smith VORTAC
(lat. 35°23'18" N.,long. 94°16'17" W.)

Within a 5-mile radius of Fort Smith Municipal Airport and within 1.3 miles each side of the 240° radial of the Fort Smith VORTAC extending from the 5-mile radius to 5.6 miles southwest of the airport excluding that airspace within Restricted Area R–2401B. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA E2 Lake Charles, LA [New]

Lake Charles Regional Airport, LA
(lat. 30°07'33" N.,long. 93°13'23" W.)
Lake Charles VORTAC
(lat. 30°08'29" N.,long. 93°06'20" W.)

Within a 5-mile radius of Lake Charles Airport and within 1.3 miles each side of the 256° radial of the Lake Charles VORTAC extending from the 5-mile radius to 5.5 miles east of the airport. This Class E airspace area is effective during the specific dates and time established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA E2 Monroe, LA [New]

Monroe Regional Airport, LA
(lat. 32°30'40" N.,long. 92°02'15" W.)
Monroe VORTAC
(lat. 32°31'01" N.,long. 92°02'10" W.)

Within a 4.2-mile radius of Monroe Regional Airport and within 1.8 miles each side of the 063° radial of the Monroe VORTAC extending from the 4.2-mile radius to 4.6 miles northeast of the airport and within 1.8 miles each side of the 217°radial of the Monroe VORTAC extending from the 4.2-mile radius to 4.6 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA E2 New Orleans Lakefront Airport, LA [New]

New Orleans Lakefront Airport, LA
(lat. 30°02'33" N.,long. 90°01'41" W.)

Within a 4.4-mile radius of Lakefront Airport excluding that portion west of long. 90°04'03"W. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW LA E2 New Orleans NAS Alvin Callender Field, LA [NEW]

New Orleans NAS Alvin Callender Field, LA
(lat. 29°49'31" N., long. 90°02'06" W.)
Harvey VORTAC

(lat 29°51'01" N., long. 90°00'10" W.)
New Orleans NAS RBN
(lat. 29°49'05" N., long. 90°02'12" W.)

Within a 4.7-mile radius of New Orleans NAS Alvin Callender Field and within 1.3 miles each side of the 228° radial of the Harvey VORTAC extending from the 4.7-mile radius to 5.6 miles southwest of the airport and within 1.3 miles each side of the 058° radial of the Harvey VORTAC extending from the 4.7-mile radius to 6 miles northeast of the airport and within 2 miles each side of the 198° bearing of the New Orleans NAS RBN extending from the 4.7-mile radius to 6.5 miles south of the airport excluding that airspace within the New Orleans, LA, Class B Airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW NM E2 Clovis, NM [New]

Clovis, Cannon AFB, NM
(lat. 34°22'58" N., long. 103°19'20" W.)
Cannon ILS Localizer
(lat. 34°22'24" N., long. 103°20'09" W.)
Cannon TACAN
(lat. 34°22'51" N., long. 103°19'21" W.)

Within a 4.6-mile radius of Cannon AFB and within 1 mile each side of the Cannon ILS localizer northeast course extending from the 4.6-mile radius to 4.8 miles northeast of the airport and within 1.3 miles each side of the 038° radial of the Cannon TACAN extending from 4.6-mile radius to 4.8 miles northeast of the airport and within 1.3 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW NM E2 Farmington, NM [New]

Farmington, Four Corners Regional Airport, NM
(lat. 36°44'31" N., long. 108°13'47" W.)
Four Corners Regional ILS Localizer
(lat. 36°44'28" N., long. 108°14'27" W.)

Within a 4.7-mile radius of Four Corners Regional Airport and within 1 mile each side of the Four Corners Regional ILS Localizer east course extending from the 4.7-mile radius to 5.4 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW OK E2 Oklahoma City Wiley Post Airport, OK [New]

Oklahoma City Wiley Post Airport, OK
(lat. 35°32'03" N., long. 97°38'50" W.)

Within a 4.3-mile radius of Wiley Post Airport excluding that airspace within the Oklahoma City, Will Rogers Airport, OK, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

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ASW TX E2 Beaumont, TX [New]

Beaumont-Port Arthur, Jefferson County Airport, TX
(lat. 29°57'03" N., long. 94°01'15" W.)

Within a 5-mile radius of Jefferson County Airport. this Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 Brownsville, TX [New]

Brownsville/South Padre Island International Airport, TX
(lat. 25°54'25" N., long. 97°25'34" W.)
Brownsville VORTAC
(lat. 25°55'27" N., long. 97°22'32" W.)

Within a 4.3-mile radius of Brownsville/South Padre Island International Airport and within 1.3 miles each side of the 071° radial of the Brownsville VORTAC extending from the 4.3-mile radius to 4.9 miles east of the airport excluding that airspace in Mexico. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 College Station, TX [New]

College Station, Easterwood Field, TX
(lat. 30°35'19" N., long. 96°21'50" W.)
College Station VORTAC
(lat. 30°36'18" N., long. 96°25'14" W.)

Within a 4.2-mile radius of Easterwood Field and within 2.1 miles each side of the 108° radial of the College Station VORTAC extending from the 4.2 mile radius to 5.9 miles east of the airport and within 1.3 miles each side of the 288° radial of the College Station VORTAC extending from the 4.2-mile radius to 5.3 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 Corpus Christi NAS, TX [New]

Corpus Christi NAS, TX
(lat. 27°42'01" N., long. 97°17'01" W.)

Within a 4.3-mile radius of Corpus Christi NAS excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 Laredo, TX [New]

Laredo International Airport, TX
(lat. 27°32'41" N., long. 99°27'41" W.)

Within a 4.3-mile radius of Laredo International Airport excluding that airspace in Mexico. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 McAllen, TX [New]

McAllen, Miller International Airport, TX
(lat. 26°10'32" N., long. 98°14'19" W.)

Within a 4.1-mile radius of Miller International Airport excluding that airspace in Mexico. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX E2 San Angelo, TX [New]

San Angelo, Mathis Field, TX
(lat. 31°21'31" N., long. 100°29'45" W.)
San Angelo ILS Localizer
(lat. 31°21'49" N., long. 100°29'05" W.)
San Angelo VORTAC
(lat. 31°22'30" N., long. 100°27'18" W.)

Within a 4.1-mile radius of Mathis Field and within 1 mile each side of the San Angelo ILS localizer northeast course extending from the 4.1-mile radius to 5.3 miles northeast of the airport and within 1.3 miles each side of the 065° radial of the San Angelo VORTAC extending from the 4.1-mile radius to 6 miles northeast of the airport. This Class E 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.

* * * * *

ASW TX E2 San Antonio, Randolph AFB, TX [New]

San Antonio, Randolph AFB, TX
(lat. 29°31'47" N., long. 98°16'44" W.)

Within a 4.4-mile radius of Randolph AFB excluding that airspace within the San Antonio International Airport, TX, Class C airspace area. This Class E 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.

* * * * *

ASW TX E2 Waco, TX [New]

Waco Regional Airport, TX
(lat. 31°36'42" N., long. 97°13'44" W.)
Waco, TSTI-Waco Airport, TX
(lat. 31°38'17" N., long. 97°04'27" W.)

Within a 4.5-mile radius of Waco Regional Airport and within a 4.4-mile radius of TSTI-Waco Airport. This Class E 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.

* * * * *

ASW TX E2 Wichita Falls, TX [New]

Wichita Falls, Sheppard AFB/Wichita Falls Municipal Airport, TX
(lat. 33°59'06" N., long. 98°29'32" W.)
Wichita Falls, ILS Localizer
(lat. 34°00'32" N., long. 98°30'07" W.)

Within a 4.9-mile radius of Sheppard AFB/Wichita Falls Municipal Airport and within 1 mile each side of the Wichita Falls ILS Localizer northwest course extending from the 4.9-mile radius to 5.7 miles northwest of the airport. This Class E 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 Fort Worth, TX, on May 4, 1994.

James A. Caudle,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–11403 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASW–06]

Modification of Class D Airspace: Austin, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Austin, TX, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with this air traffic control tower is required.

DATES: *Effective date:* 0901 UTC, June 23, 1994.

Comment date: Comments must be received on or before June 16, 1994.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 94–ASW–06, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Forth Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: (817) 222–5595.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the "DATES" section. However, after the review of the comments, and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings, extend the effective date of the rule or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Austin, TX by amending the areas' effective hours to coincide with the associated control tower's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with this air traffic control tower is required.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraphs 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 will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify this Class D airspace area in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 94–24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ASW TX D Austin Bergstrom AFB, TX [Revised]

Austin, Bergstrom AFB, TX
(lat. 30°11'42" N., long. 97°40'37" W.)
Bergstrom ILS Localizer
(lat. 30°13'01" N., long. 97°40'46" W.)
Bergstrom TACAN
(lat. 30°11'51" N., long. 97°40'59" W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.6-mile radius of Bergstrom AFB and within 1 mile each side of the Bergstrom ILS localizer south course extending from the 4.6-mile radius to 5 miles south of the airport and within 1.3 miles each side of the 170° radial of the Bergstrom TACAN extending from the 4.6-mile radius to 5 miles south of the airport excluding that airspace within the Austin, Robert Mueller Municipal Airport, TX, Class C airspace area. 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.

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Issued in Fort Worth, TX, on May 4, 1994.

James A. Caudle,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94-11402 Filed 5-10-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8476; TD 8425]

RIN 1545-AR05; 1545-AP09; 1545-AJ63

Arbitrage Restrictions on Tax-Exempt Bonds; Information Reporting for Tax-Exempt Bond Issues; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (TD 8476, and TD 8425), which were published in the **Federal Register** for Friday, June 18, 1993 (58 FR 33510) and Wednesday, August 12, 1992 (57 FR 36001), respectively. The final regulations relate to the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments; and information reporting requirements for tax-exempt bonds.

EFFECTIVE DATES: Sections 1.148-3 and 1.148-10 are effective on July 1, 1993. Section 1.149(e)-1 is effective on August 12, 1992.

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

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these correcting amendments are under sections 148 and 149 of the Internal Revenue Code.

Need for Correction

As published, TD 8476 and TD 8425 contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

PART 1—[AMENDED]

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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

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

Par. 2. Section 1.148-3 is amended as follows:

1. Revise *Example 1* of paragraph (j).
2. Add paragraph (iii)(D) to *Example 2* of paragraph (j).

§ 1.148-3 General arbitrage rebate rules.

* * * * *

(j) * * *

Example 1. Calculation and payment of rebate for a fixed yield issue. (i) *Facts.* On January 1, 1994, City *A* issues a fixed yield issue and invests all the sale proceeds of the issue ($49 million). There are no other gross proceeds. The issue has a yield of 7.0000 percent per year compounded semiannually (computed on a 30 day month/360 day year basis). City *A* receives amounts from the investment and immediately expends them for the governmental purpose of the issue as follows:

Date	Amount
2/1/94	$3,000,000
5/1/94	5,000,000
1/1/95	5,000,000
9/1/95	20,000,000
3/1/96	22,000,000

(ii) *First computation date.* (A) City *A* chooses January 1, 1999, as its first computation date. This date is the latest date that may be used to compute the first required rebate installment payment. The rebate amount as of this date is computed by determining the future value of the receipts and the payments for the investment. The compounding interval is each 6-month (or shorter) period and the 30 day month/360 day year basis is used because these conventions were used to compute yield on the issue. The future value of these amounts, plus the computation credit, as of January 1, 1999, is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/94	($49,000,000)	($69,119,339)
2/1/94	3,000,000	4,207,602
5/1/94	5,000,000	6,893,079
1/1/95	5,000,000	6,584,045
1/1/95	(1,000)	(1,317)
9/1/95	20,000,000	25,155,464
1/1/96	(1,000)	1,229)
3/1/96	22,000,000	26,735,275
1/1/97	(1,000)	(1,148)
Rebate amount (1/01/99)		452,432

(B) City *A* pays 90 percent of the rebate amount ($407,189) to the United States within 60 days of January 1, 1999.

(iii) *Second computation date.* (A) On the next required computation date, January 1, 2004, the future value of the payments and receipts is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/99	$452,432	$638,200
Rebate amount (1/01/04)		638,200

(B) As of this computation date, the future value of the payment treated as made on January 1, 1999, is $574,380, which equals at least 90 percent of the rebate amount as of this computation date ($638,200 × 0.9), and thus no additional rebate payment is due as of this date.

(iv) *Final computation date.* (A) On January 1, 2009, City *A* redeems all the bonds, and thus this date is the final computation date. The future value of the receipts and payments as of this date is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/04	$638,200	$900,244
1/1/09	(1,000)	(1,000)
Rebate amount (1/01/09)		899,244

(B) As of this computation date, the future value of the payment made on January 1, 1999, is $810,220 and thus an additional rebate payment of $89,024 is due. This payment reflects the future value of the 10 percent unpaid portion, and thus would not be owed had the issuer paid the full rebate amount as of any prior computation date.

Example 2. Calculation and payment of rebate for a variable yield issue. * * *

(iii) * * *

(D) If the yield during the second computation period were, instead, 7.0000 percent, the rebate amount computed as of July 1, 1999, would be $1,320,891. The future value of the payment made on July 1, 1999, would be $1,471,007, and, therefore, City B would have overpaid the rebate amount by $150,116.

* * * * *

Par. 3. Section 1.148–10(d) is amended by revising the ninth and tenth sentence of *Example 1* as follows:

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

* * * * *

(d) * * *

Example 1. * * * The Bank note and the 1994 issue have different prepayment terms. The City does not reasonably expect to treat prepayments of the Bank note as gross proceeds of the 1994 issue. * * *

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Par. 4. Section 1.149(e)–1 is amended by revising paragraphs (e)(3)(i) and (e)(4) as follows:

§ 1.149(e)–1 Information reporting requirement for tax-exempt bonds.

* * * * *

(e) * * *

(3) * * *

(i) *Bond.* The date of issue of a bond is determined under § 1.150–1.

* * * * *

(4) *Issue price.* The term "issue price" has the same meaning given the term under § 1.148–1(b).

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94–11219 Filed 5–6–94; 9:52 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–4883–9]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing its decision not to change the corresponding onshore area ("COA") designations for outer continental shelf ("OCS") platforms Habitat, Henry, Hillhouse, Houchin, Hogan, and Union A, B, and C (collectively, the "OCS platforms"). This decision on the reconsideration proceeding was proposed in the **Federal Register** on November 19, 1993. Pursuant to petitions filed by Unocal and Ventura, the reconsideration proceeding was convened on March 16, 1993 to determine whether the COA for the OCS platforms should be changed to the Ventura County Air Pollution Control District ("Ventura County APCD" or "VCAPCD"). The COA for these platforms is currently the Santa Barbara County Air Pollution Control District ("Santa Barbara County APCD" or "SBCAPCD") as established in the final OCS rule promulgated September 4, 1992. The intended effect of this document is to finalize the designation of the Santa Barbara County APCD as the COA for the OCS platforms so that the sources can comply with the OCS air regulations (40 CFR part 55) by the September 4, 1994 compliance date.

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

ADDRESSES: Material relevant to the COA designations for the OCS platforms listed above can be found in EPA docket A–91–76. This docket is available for public inspection and copying at the following locations:

U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

These locations are open to the public Monday through Friday, 9 a.m. to 5 p.m., excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105. (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated the OCS rule (40 CFR part 55) in the **Federal Register** pursuant to section 328 of the Clean Air Act (the "Act"). (57 FR 40792). The OCS rule established requirements to control air pollution from OCS sources in order to attain and maintain Federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. The rule applies to all OCS sources located offshore of the United States except for those located in the Gulf of Mexico west of 87.5 degrees longitude. The Act requires new OCS sources (as defined in section 111(a)) to comply with the OCS rule immediately upon promulgation, and existing sources to comply 24 months thereafter, or by September 4, 1994.

Pursuant to section 328, the requirements for sources located within 25 miles of a state's seaward boundary must be the same as would be applicable if the sources were located in the COA. The Administrator designated the nearest onshore area ("NOA") as the COA for all existing and proposed sources offshore of California in the preamble to the final rule.[1] If an area other than the NOA desires to become the COA, that area must submit a request and make a demonstration pursuant to 40 CFR 55.5.

On November 2 and 3, 1992, Union Oil Company of California, Pacific Operators, Inc. d.b.a. Pacific Operators Offshore, Inc., and Texaco Exploration and Production Inc. (collectively, "Unocal") and the Ventura County APCD filed petitions for reconsideration with EPA, asking EPA to reconsider the COA designations for the OCS platforms Habitat, Henry, Hillhouse, Houchin, Hogan, and Union A, B, and C. The Ventura County APCD and Unocal also filed petitions for review in the Courts of Appeal for the District of Columbia and the Ninth Circuits, but these cases have been stayed pending EPA's review of their petitions for reconsideration.[2]

EPA granted the parties' requests for reconsideration on March 16, 1993. The parties agreed to a June 15, 1993 deadline for the submittal of a stringency analysis and any other relevant data by the Ventura County APCD and the Santa Barbara County APCD. Rules applicable to OCS sources that were already adopted by both the Ventura and Santa Barbara County APCDs as of September 4, 1992, the date of the OCS rule promulgation and the version of the rule to which the petition pertains, were to be used for the stringency comparison. EPA encouraged the parties to work together to reach consensus on as many issues as possible. The Santa Barbara County APCD agreed to submit any issues and information to EPA by June 15, as opposed to after EPA's proposal, to facilitate a timely resolution. On June 15, 1993, both the Ventura County APCD and the Santa Barbara APCD submitted the relevant information to EPA.

Pursuant to § 55.5 (b), the chief executive officer of an APCD, such as the Ventura County APCD, who believes that the District has more stringent air pollution control requirements than the NOA for a proposed OCS source, may submit a request to EPA for the APCD

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[1] The COA designations were codified on March 16, 1993. 58 FR 14157.

[2] *Ventura County Air Pollution Control District* v. *U.S. EPA*, No. 92–1572 (D.C. Cir. Nov. 3, 1992); *Ventura County Air Pollution Control District* v. *U.S. EPA, No. 92–70730 (9th Cir. Nov. 3, 1992); Union Oil Co.* v. *U.S. EPA*, No. 92–1570 (D.C. Cir. Nov. 21, 1992); *Union Oil Co.* v. *U.S. EPA*, No. 70727 (9th Cir. Nov. 3, 1992). In addition, the Santa Barbara County APCD filed a petition for review of the OCS rule in the Court of Appeals for the District of Columbia, *Santa Barbara County Air Pollution Control District* v. *EPA*, No. 92–1569 (D.C. Cir Nov. 2, 1992), and intervened in the four Unocal and Ventura County APCD actions.

to be designated as the COA. The Ventura County APCD submitted such a request for the OCS platforms at issue. In order to substantiate its request, the Ventura County APCD, not being the NOA, must make a demonstration that: (1) The Ventura County APCD has more stringent requirements with respect to the control and abatement of air pollution than the Santa Barbara County APCD; (2) the emissions from the OCS platforms are or would be transported to the Ventura County APCD; and (3) the transported emissions would affect the Ventura County APCD's effort to attain or maintain a Federal or state ambient air quality standard or to comply with the requirements of part C of title I of the Act, taking into account the effect of air pollution control requirements that would be imposed if the Santa Barbara County APCD were designated as the COA. § 55.5(b)(2).

EPA examined the material submitted by the Ventura County APCD and the Santa Barbara County APCD regarding EPA's COA designation for the OCS platforms at issue. The submittal was evaluated on a rule by rule basis comparing the rules' requirements, standards, and exemptions. A copy of this evaluation is contained in the Technical Support Document (TSD) dated September 24, 1993. In response to comments, EPA has prepared a supplement to the TSD dated February 23, 1994. After review of the submitted analyses, EPA determined that Ventura County did not demonstrate that the Ventura County APCD's requirements are more stringent with respect to the control of air pollutants than those of the Santa Barbara County APCD. For this reason, EPA is finalizing the decision not to change the OCS platform COA designations.

Response to Public Comments

A 30-day public comment period was provided in the proposed action to deny Ventura APCD's request to be designated the COA. 58 FR 61041. EPA received comments from the Ventura County APCD, the Santa Barbara County APCD, Pacific Operators Offshore, Inc. and Unocal. These comments and the responses are summarized below:

1. Ground Rules To Be Used for the Stringency Analysis

1–1. Comment: EPA violated and ignored its own established ground rules for the stringency determination by relying on Santa Barbara's interpretation of Rule 331. EPA established ground rules for the stringency analysis that among other things established the requirement that actual rule language must be used to determine which agencies' rules would result in greater emission reductions, and that innovative interpretations would not be allowed.

Response: EPA disagrees that it violated established ground rules for the analysis. EPA established the following requirements for the reconsideration proceedings: (1) The criteria outlined in 40 CFR 55.5 must be used; and (2) the date of September 4, 1992 should be used for rule comparisons.

Section 55.5 states that the area requesting to be designated the COA in place of the NOA must demonstrate that:

a. The area has more stringent requirements with respect to the control and abatement of air pollution than the NOA;

b. The emissions from the source are or would be transported to the requesting area; and

c. The transported emissions would affect the requesting area's efforts to attain or maintain a Federal or state ambient air quality standard or to comply with the requirements of part C of title I of the Act, taking into account the effect of air pollution control requirements that would be imposed if the NOA were designated as the COA.

At the request of the Ventura County APCD, EPA Region 9 hosted a meeting of interested parties on March 4, 1993. EPA reiterated at that time the 3 regulatory criteria of § 55.5 that Ventura County must meet to have the Ventura County APCD designated the COA for the eight (8) platforms in question. Other issues discussed included:

(1) The rules to be evaluated in the stringency comparison would be those adopted by the Districts as of September 4, 1992 (the rules actually on the books at the time of promulgation). EPA did not impose any requirements that limited the stringency analysis to a rule's "actual language" and the issue of regulatory interpretation was not discussed.

(2) The inclusion/exclusion of modifications, proposed modifications, and future/hypothesized modifications was discussed.

(3) Ventura County and Santa Barbara County APCDs were to reach an agreement on workable emission factors.

(4) A schedule was discussed for gathering and submitting the necessary information for the reconsideration.

In conclusion, EPA set only 2 "ground rules": the criteria of 40 CFR 55.5 must be used, and rules adopted by the Districts as of September 4, 1992 should be compared. There was no requirement limiting the stringency analysis to a rule's actual language.

1–2. Comment: EPA selected a cut off date for rule comparison which coincided with the promulgation of the final rule, September 4, 1992. By fixing this date instead of the December 5, 1991 promulgation of the proposed rule additional Santa Barbara County rules qualified for inclusion in the stringency analysis.

Response: The parties asked EPA which date should be used for the stringency analysis. EPA set September 4, 1992. This date was not chosen to include or exclude specific rules but rather was chosen because it was the date of promulgation of the final OCS rule. Neither party objected to that date at the time it was selected. If the December 5, 1991 date had been chosen, the following rule revisions from both districts would not have been included:

SBCAPCD:

Rule 331, Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)

Rule 333, Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 12/10/91)

VCAPCD:

Rule 71.1, Crude Oil Production and Separation (Adopted 6/16/92)

Rule 74.10, Components at Crude Oil and Natural Gas Production Processing Facilities (Adopted 6/16/92)

2. Quantification of Emissions

2–1. Comment: EPA failed to quantify emissions reductions. The basis of EPA's analysis is simply a rule by rule comparison between the Santa Barbara and Ventura County rules, versus an analysis on a platform by platform basis that shows actual emission reductions.

Response: Neither section 328 of the Act nor 40 CFR 55.5 requires EPA to specifically quantify emission reductions. Pursuant to 40 CFR 55.5, VCAPCD had to demonstrate that: (1) It had more stringent air pollution requirements than SBCAPCD; (2) the emissions from the source are or would be transported to VCAPCD; and (3) the transported emissions would affect the VCAPCD's effort to attain or maintain a Federal or state ambient air quality standard or to comply with the requirements of part C of title I of the Act, taking into account the effect of air pollution control requirements that would be imposed if the NOA were designated as the COA.

EPA received a stringency analysis from VCAPCD and SBCAPCD, and reviewed both of the submittals in detail. After review of the Districts' submittals, EPA conducted an independent rule analysis that compared the rules' standards, requirements, and exemptions to determine if VCAPCD's requirements were more stringent than SBCAPCD.

EPA also requested SBCAPCD to submit additional information on its Rule 331, and provided VCAPCD an opportunity to also submit additional information on SBCAPCD Rule 331. Based on its independent rule analysis, EPA concluded that for all the requirements found to be applicable by VCAPCD, none were more stringent than the SBCAPCD. As a result of EPA's conclusion that VCAPCD's requirements were not more stringent, it was not necessary in this case for EPA to quantify emission reductions at each platform.

2–2. Comment: EPA did not quantify emission differences in real terms between the districts' fugitive emissions and architectural coatings rules.

Response: As stated above, because EPA found the VCAPCD's rules were not more stringent than SBCAPCD's rules when comparing each element of the rules, a further quantitative analysis was not required. A detailed analysis of both Districts' fugitive emissions rules is included in the TSD. In response to comments, EPA again reviewed the exemption provisions of the Districts' fugitive emissions rules and concluded that VCAPCD's inspection requirements, leak thresholds, and exemptions are not more stringent than SBCAPCD's fugitive emission rule. Therefore, VCAPCD's rule would not have resulted in greater reductions.

VCAPCD's analysis found that there is no difference in the Districts' architectural coatings rules. Although EPA's rule comparison showed the rules are substantiallly similar, SBCAPCD has lower limits for some coatings. Based on this analysis, EPA properly determined that the VCAPCD rules are not more stringent. EPA did not need to quantify the difference in reductions to make that determination.

3. Santa Barbara County APCD Rule 331–Fugitive Emissions Inspection and Maintenance

3–1. Comment: EPA erred in adopting Santa Barbara's administrative interpretation of the scope of the application of Rule 331, Fugitive Emissions Inspection and Maintenance.

Response: EPA received opposing interpretations of SBCAPCD's rule 331 in the initial analyses submitted by the Districts. First, VCAPCD contended that SBCAPCD's Rule 331 does not cover venting of emissions; and second, SBCAPCD interpreted its rule to cover venting. EPA requested that SBCAPCD support its interpretation, and on August 30, 1993, the Santa Barbara County Counsel submitted an interpretation of Rule 331 on behalf of the SBCAPCD. On September 9, 1993, the Ventura County Counsel submitted a different interpretation of the rule on behalf of the VCAPCD. After careful consideration of the two positions, EPA determined that SBCAPCD's interpretation of its own rule was reasonable and consistent with the Act, and therefore, concluded that deference to Santa Barbara's reasonable interpretation of its own rule was appropriate.

3–2. Comment: The TSD failed to mention the letter from Ventura County Counsel on behalf of the Ventura County APCD, explaining why EPA should not and need not follow Santa Barbara's interpretation.

Response: Failure to mention Ventura County Counsel's letter in the TSD was simply an oversight. It was, however, included in the docket upon its receipt. Moreover, as stated above, EPA carefully reviewed the letter from Ventura County Counsel. EPA decided to defer to SBCAPCD's interpretation of Rule 331 because it was consistent with the language of the rule and the Act, and was a reasonable interpretation.

3–3. Comment: If Rule 331 has the ability to regulate venting as claimed by Santa Barbara County Counsel, why is the SBCAPCD currently seeking the adoption of Rule 325 (which states "emissions of produced gas shall be controlled at all times")?

Response: EPA does not know the District's intentions. However, Federal, state, and local agencies often revise existing rules and adopt new provisions to clarify the intent of the existing rules. In any event, the critical issue is whether VCAPCD has shown that its rules are more stringent than SBCAPCD's rules. Based on EPA's analysis, as reflected in the response to comments, VCAPCD did not make such a showing.

3–4. Comment: In EPA's TSD, EPA concludes that VCAPCD's exemption provisions in its fugitive emissions rule appear to be more stringent than SBCAPCD's rule exemption requirements (i.e. the VCAPCD provision would result in greater emission reductions). This is not the case. SBCAPCD's fugitive emissions rule allows fewer components to be exempt than Ventura's rule. In addition, exempted components are still subject to other control requirements of SBCAPCD Rule 331 (e.g., capping of open-ended lines, repair of leakers, leak threshold requirements) while components exempted under Ventura Rule 74.10 are exempted from all rule requirements.

Response: The commenter is correct. The TSD should have read that VCAPCD's rule's exemption requirements do not appear to be more stringent than the provisions in SBCAPCD's rule. The supplemental TSD has been revised to reflect this correction.VCAPCD's rule's exemption requirements do not control as many components and thus are not more stringent than the provisions in SBCAPCD's rule.

VCAPCD's Rule 74.10 exempts:

(1) Components, not at natural gas processing plants, with gaseous streams with ROC concentrations of 12% by weight or less.

(2) Any component at a natural gas processing plant with gaseous streams with ROC concentrations, less the ethane concentration, equal to or less than 1% by weight.

(3) Components, except for components at natural gas processing plants, in liquid service, with ROC concentrations of 12% by weight or less.

SBCAPCD's Rule 331 exempts:

(1) Components exclusively handling natural gas. (Natural gas by the District's rule definition is a mixture of gaseous hydrocarbons, with at least 80 percent methane, and less than one percent of ROC, on a weight basis, excluding ethane, determined according to specified test methods.)

(2) Components buried below ground.

(3) One-half inch and smaller stainless steel tube fittings which have been determined to be leak-free by the Control Officer based on an initial inspection in accordance with the test method section.

3–5. Comment: The exemption element of the fugitive emission rules may be the most significant element of the rule since that determines whether the rules apply at all.

Response: As stated and outlined above, the exemptions in both Districts' fugitive emissions rules were thoroughly evaluated.

3.6. Comment: EPA seemingly gives the edge to Santa Barbara's fugitive hydrocarbon emission rule even though Ventura's rule results in a greater reduction of approx. 67 tons per year (t/y) ROC (reactive organic compounds).

Response: The commenter misstates the conclusion of VCAPCD's stringency submittal. The 67 t/y difference was not based on this one rule; rather the VCAPCD stringency submittal contained a comparative analysis of all VCAPCD and SBCAPCD requirements and stated that application of all of VCAPCD's rules would result in a reduction of 67 t/y more than application of the SBCAPCD rules. However, when evaluating individual rules such as VCAPCD's fugitive emissions rule

against SBCAPCD's fugitive emissions rule, EPA concluded that SBCAPCD's rule has more stringent requirements for inspection practices, leak thresholds, and exemptions, and would not result in less emission reductions than VCAPCD's rule.

4. Marine Loading Rule

4–1. Comment: EPA neglected to recognize that the difference in VOC emission reductions caused by the difference between Ventura and Santa Barbara marine vessel loading requirements is insignificant (0.07 tons per year) when compared to the overall difference in VOC emissions found when all Ventura and Santa Barbara requirements are compared (67.4 tons per year).

4–2. Comment: A simplistic comparison of rule language will bias the results if equal weight is given to both insignificant and significant rules. EPA apparently gives Santa Barbara full credit for having a marine loading rule in place, yet the rule only results in a reduction of 0.07 t/y ROC.

Response: EPA evaluated the marine vessel loading requirements because VCAPCD included a review of those requirements in the stringency analysis. EPA analyzed all rules submitted to it by VCAPCD and SBCAPCD. If this requirement and the reductions from this requirement are not significant, VCAPCD could have omitted it from its stringency analysis.

According to VCAPCD's analysis, a marine loading rule would apply to OCS sources. Moreover, SBCAPCD has a marine loading rule but VCAPCD does not. EPA's evaluation showed that SBCAPCD's marine loading rule did apply to OCS sources and VCAPCD did not have a marine loading rule. Therefore, for sources subject to the marine loading rule, VCAPCD's requirements are not more stringent.

As stated in response to comment 2–1, EPA did not attach "credit" or "weight" to the rules. The analyses submitted by both VCAPCD and SBCAPCD were reviewed in detail by comparing the rules' standards, requirements, and exemptions, which allowed EPA to determine which District's requirements are more stringent. Since EPA determined that none of Ventura's rules evaluated were more stringent, there was no need to assign credit or weight to the rules.

5. Oil Drilling Operations

5–1. Comment: EPA disregarded Ventura's application of its oilfield drilling requirements to drilling engines while they are being used for operations that are not specifically listed in the rule's definition of "Drilling Operations."

Response: EPA has re-evaluated this issue by consulting with VCAPCD, Texaco, and Pacific Operators Offshore, Inc. on the type of drilling rigs on platforms Habitat, Hogan, and Houchin. After consultation and review of the types of drilling rigs on the platforms, EPA concluded that the drilling rigs in question were defined as vehicular rigs and would not be subject to VCAPCD Rule 74.16 by definition.

5–2. EPA gives Santa Barbara full credit for a stricter architectural coating rule without investigating if such coatings are actually used, yet denies Ventura credit for a more restrictive diesel internal combustion (I.C.) engine rule because, in EPA's opinion, there are currently no drilling activities offshore which could be regulated under Ventura's rule. In our opinion, this biased mistreatment demonstrates the need to return to a quantification method of comparing rules.

Response: There was no "biased mistreatment." EPA evaluated all the information contained in VCAPCD's stringency analysis. First, the architectural coatings rule was listed in VCAPCD's analysis as an applicable requirement. EPA reviewed that requirement and determined that although VCAPCD's stringency analysis stated VCAPCD and SBCAPCD rules are equivalent, SBCAPCD's rule has lower limits for some coatings.

Second, the Stationary Internal Combustion Engines rule and Oilfield Drilling Operations rule were listed in VCAPCD's analysis as applicable requirements. EPA reviewed the requirements and determined that the Stationary I.C. Engines rule does apply but the Oilfield Drilling Operations rule did not apply. VCAPCD's analysis listed two rules applicable to diesel I.C. engines: a) 74.9, Stationary Internal Combustion Engines and b) 74.16, Oilfield Drilling Operations.

According to VCAPCD's analysis, Rule 74.9 does not set emission limits for diesel engines (non-drilling), while SBCAPCD's Rule 333 (Control of Emissions from Reciprocating Internal Combustion Engines) limits NOx emissions from diesel engines (non-drilling) to 797 ppmV (corrected to 15% oxygen). All other requirements in the rules are equivalent.

VCAPCD's analysis also states that if Rule 74.16 (Oilfield Drilling Operations) was applied, greater reductions would be achieved when compared to SBCAPCD's Rule 333. VCAPCD's analysis asserted that two engines on platform Habitat (Texaco), one engine on Hogan (Pacific Operators Offshore, Inc.), and one engine on Houchin (Pacific Operators Offshore, Inc.) would be subject to the rule. Again, after consultation with VCAPCD, Texaco, and Pacific Operators, Inc., EPA determined that by definition these engines on Habitat, Hogan, and Houchin would not be subject to Rule 74.16.

In conclusion, VCAPCD does not have a more restrictive diesel I.C. engine rule because:

(1) For Oilfield Drilling Operations, VCAPCD's Rule 74.16 does not apply to the drilling engines on the three platforms; and

(2) For stationary I.C. engines, VCAPCD's Rule 74.9 does not set limits for non-drilling diesel engines and the other requirements of the rule are equivalent to SBCAPCD's Rule 333.

6. Other

6–1. Comment: EPA disregarded Ventura's submittal regarding the relative stringency of the districts' New Source Review (NSR) rules–rules that could generate significant emission reductions.

Response: EPA did not disregard VCAPCD's submittal. In fact, VCAPCD stated in its submittal that no major projects are budgeted at this time on the platforms, and the future difference in emissions caused by the difference between the NSR requirements of VCAPCD and SBCAPCD cannot be quantified. In addition to the fact that these rules do not appear to be applicable in the near future, it would be very difficult to determine the relative stringency of NSR rules. NSR rules do not involve specific limitations or standards, but are applied on a case by case basis. Based on this information, EPA did not review the requirements of the NSR rules.

6–2. Comment: The decision proposed in the November 19, 1993 notice of proposed rulemaking seems not to be based on sound scientific or technical analysis.

Response: EPA's decision was based on a detailed technical analysis of the VCAPCD and SBCAPCD rule requirements, which is set forth in the TSD, and additional analysis in response to comments to the proposed action to deny VCAPCD's request to be designated the COA for the OCS platforms.

6–3. Comment: EPA's decision will cause a dual agency jurisdiction for Pacific Operators Offshore, Inc. facilities, with the onshore plant being regulated by Ventura County, and the offshore platforms being regulated by Santa Barbara County. EPA should not financially damage a small business operator, further weaken the local and

California economies, and further increase U.S. dependency on foreign oil, regarding an issue that has little or no air quality impact on the county EPA is currently designating as the COA.

Response: In determining the COA for the OCS platforms, EPA followed the requirements of section 328 of the Act and 40 CFR 55.5. The Act addressed only air quality concerns with regard to redesignation of a COA for an OCS source, and not the relationship to onshore facilities. Many companies onshore also have facilities in multiple locations, thereby having to comply with different local requirements.

6–4. Comment: Santa Barbara's overall enforcement capabilities have recently been questioned by David Howekamp, Director, Air & Toxics Div. of EPA in a letter dated June 11, 1993.

Response: This issue has no bearing on the stringency analysis. The reference correspondence was in response to the District's proposed reorganization plans. EPA expressed concern that the reorganization might jeopardize the District's ability to comply with the Federal law due to a possible reduction in staff and resources. The letter did not reflect any specific allegations of current failure to enforce in Santa Barbara County. However, if a District fails to enforce the requirements of the Act, EPA has the authority to take independent enforcement action.

EPA Action

EPA has evaluated the comments received and is reaffirming the following OCS platform COA designations as provided in the final rule. The designated COA shall remain the COA for the lifetime of each source:

Platform A: Santa Barbara County Air Pollution Control District
Platform B: Santa Barbara County Air Pollution Control District
Platform C: Santa Barbara County Air Pollution Control District
Platform Habitat: Santa Barbara County Air Pollution Control District
Platform Henry: Santa Barbara County Air Pollution Control District
Platform Hillhouse: Santa Barbara County Air Pollution Control District
Platform Hogan: Santa Barbara County Air Pollution Control District
Platform Houchin: Santa Barbara County Air Pollution Control District

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7627).

Dated: May 4, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–11468 Filed 5–10–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC23

Disaster Assistance; Hazard Mitigation and Relocation Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule increases the Federal share for eligible hazard mitigation and relocation assistance projects from a maximum of 50 percent to 75 percent, increases the total amount of grant assistance available for each disaster, and places restrictions on property acquisition and relocation projects. The intent of the changes is to carry out the Hazard Mitigation and Relocation Assistance Act of 1993, which provides new flexibility in hazard mitigation and relocation assistance to States.

EFFECTIVE DATE: May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Chief, Program Implementation Division, room 417, 500 C Street SW., Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The President signed the Hazard Mitigation and Relocation Assistance Act (the Act), Pub. L. 103–181, on December 3, 1993. The Act amends Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170c, to increase the Federal contribution to 75 percent, to increase the limit on Federal expenditures, and to place restrictions on property acquisition and relocation project grants. This interim rule amends 44 CFR part 206 to implement the Act.

We amend the definition of grant to include the newly established limit on the total grant award. The Act states that the grant award for hazard mitigation shall not exceed 15 percent of the total estimated Federal grant assistance (excluding administrative costs) provided under the Stafford Act. Grant assistance is available under Sections 403, 406, 407, 408, 410, 411, 416, and 601 of the Stafford Act. FEMA will estimate the amount of assistance provided under these sections based on available data summarized in the damage survey reports and the Disaster Management and Projections report. FEMA will include in this total the cost of mission assignments to other agencies that provide functions that would normally be funded as grant assistance.

The Act increases from 50 percent to 75 percent the maximum Federal contribution of the cost of hazard mitigation measures, and increases total grant awards from 10 percent of Section 406 to 15 percent of the total estimated Federal assistance under the Stafford Act.

Under the Act, FEMA must restrict the eligibility of projects involving property acquisition and relocation assistance for property owners and structures. An eligible applicant must enter an agreement with the Director of FEMA that provides assurances that the property will be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices, and no future Federal disaster assistance in any form will be sought or given with respect to the property. No structures can be built on these properties unless they are public facilities and functionally related to open space usage and are open on all sides, or are rest rooms.

The Director may approve other structures, in writing and before construction begins. The Director's approval will be granted rarely, and when granted, buildings must be compatible with open space, recreational, or wetlands management practices and be in accordance with sound floodplain management.

The Act makes the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 inapplicable to properties damaged by flooding during the 1993 Midwest Floods when certain conditions are met. We define the conditions under which acquisition of certain properties in nine midwestern States is not subject to the Uniform Relocation Act. The intent and effect of this provision is to simplify and speed the acquisition and relocation process in the nine States severely affected by the Midwest Floods of 1993.

National Environmental Policy Act

This rule is excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this interim rule is required by statute, 42 U.S.C. 5170(c), which also specifies the regulatory approach taken in the proposed rule. To the extent possible under the statutory requirements of 42 U.S.C. 5170(c), this proposed rule adheres to the principles of regulation as set forth in this Executive Order.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

In promulgating this rule, FEMA has considered the President's Executive Order 12612 on Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures under 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. No Federalism assessment has been prepared.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform, dated October 25, 1991, 3 CFR, 1991 Comp., p. 359.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Community facilities, Disaster Assistance, Grant programs-housing and community development, Housing, Natural resources.

Accordingly, 44 CFR part 206 is amended as follows:

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of 1978, 5 U.S.C. App.1; E.O. 12148, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 3 CFR, 1989 Comp., p. 214.

2. Section 206.430 is revised to read as follows:

§ 206.430 General.

This subpart provides guidance on the administration of hazard mitigation grants made under the provisions of section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, hereafter Stafford Act, or the Act.

3. Paragraph (c) of Section 206.431 is revised to read as follows:

§ 206.431 Definitions.

* * * * *

(c) *Grant* means an award of financial assistance. The total grant award shall not exceed ten percent of the estimated Federal assistance provided under section 406 of the Stafford Act for major disasters declared before June 10, 1993. For major disasters declared on or after June 10, 1993, the total grant award shall not exceed 15 percent of the total estimated Federal assistance (excluding any associated administrative costs) provided under sections 403, 406, 407, 408, 410, 411, 416, and 601 of the Stafford Act.

* * * * *

4. Paragraphs (b) and (c) of section 206.432 are revised to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) *Limitations on Federal expenditures.* The total of Federal assistance under section 404 shall not exceed 15 percent of the total estimated Federal assistance (excluding any associated administrative costs) provided under sections 403, 406, 407, 408, 410, 411, 416, and 601 of the Stafford Act. The estimate of Federal assistance under these sections shall be based on the Regional Director's estimate of all Damage Survey Reports, actual grants, mission assignments, and associated expenses.

(c) *Cost sharing.* All mitigation measures approved under the State's grant will be subject to the cost sharing provisions established in the FEMA-State Agreement. FEMA may contribute up to 75 percent of the cost of measures approved for funding under the Hazard Mitigation Grant Program for major disasters declared on or after June 10, 1993. FEMA may contribute up to 50 percent of the cost of measures approved for funding under the Hazard Mitigation Grant Program for major disasters declared before June 10, 1993. The nonfederal share may exceed the Federal share. FEMA will not contribute to costs above the Federally approved estimate.

5. Section 206.434 is amended by revising paragraph (c)(4), redesignating paragraphs (d) and (e) as paragraphs (f) and (g) respectively, and adding new paragraphs (d) and (e) to read as follows:

§ 206.434 Eligibility.

* * * * *

(c) * * *

(4) Property acquisition or relocation, as defined in § 206.434(d);

* * * * *

(d) *Property acquisition and relocation requirements.* A project involving property acquisition or the relocation of structures and individuals is eligible for assistance only if the applicant enters an agreement with the FEMA Regional Director that provides assurances that:

(1) The following restrictive covenants shall be conveyed in the deed to any property acquired, accepted, or from which structures are removed (hereafter called in section (d) the property):

(i) The property shall be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices; and

(ii) No new structure(s) will be built on the property except as indicated below:

(A) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(B) A rest room; or

(C) A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Director approves in writing before the construction of the structure begins.

(iii) After completion of the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.

(2) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, previous parking lots, and buffer zones.

(3) Any structures built on the property according to paragraph (d)(1) of this section, shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

(e) *Inapplicability of the Uniform Relocation Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 does not apply to real property acquisition projects which meet the criteria identified below:

(1) The project provides for the purchase of property damaged by the major, widespread flooding in the States of Illinois, Iowa, Kansas, Minnesota,

Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin during 1993;

(2) It provides for such purchase solely as a result of such flooding;

(3) It is carried out by or through a State or unit of general local government;

(4) The purchasing agency (grantee or subgrantee) notifies all potential property owners in writing that it will not use its power of eminent domain to acquire the properties if a voluntary agreement is not reached;

(5) The project is being assisted with amounts made available for:

(i) Disaster relief by the Federal Emergency Management Agency; or

(ii) By other Federal financial assistance programs.

* * * * *

(Catalogue of Federal Domestic Assistance No. 83–516, "Disaster Assistance")

Dated: May 4, 1994.

James L. Witt,

Director.

[FR Doc. 94–11422 Filed 5–10–94; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF ENERGY

48 CFR Parts 904, 905, 914, 915, 917, 919, 936, 943, 952, and 970

Acquisition Regulation; Updated Coverage

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department today issues a final rule to amend the Department of Energy Acquisition Regulation (DEAR). This rule represents the Department's initial effort in meeting the intent of Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations, as applied to its acquisition regulation. The rule deletes obsolete coverage, updates existing coverage, and clarifies existing coverage in the areas of sensitive foreign nation controls, special research contracting, rental of construction equipment, use of Standard Form 30, Amendment of Solicitation Modification of Contract, incorporation of contract clauses by reference, subcontractor representations and certifications, and conduct of contractor employees. These changes are summarized in the "Section-by-Section Analysis" appearing later in this document.

EFFECTIVE DATE: This final rule will be effective July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Kevin M. Smith, Procurement Policy Division (HR–521.1), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8189.

SUPPLEMENTARY INFORMATION:

I. Section-by-Section Analysis
II. Public Comments
III. Procedural Requirements
A. Regulatory Review
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the National Environmental Policy Act

I. Section-by-Section Analysis

A detailed list of changes follows:

1. Section 904.404 is amended to reference the updated version of Department of Energy Order 1240.2, Unclassified Visits and Assignments by Foreign Nationals.

2. Subsection 904.601–71, paragraph (b) is revised to delete two references to special research contracts, which are no longer used by the Department.

3. Subsection 905.403–70, paragraph (c) is deleted to remove a reference to special research contracts, which are no longer used by the Department.

4. Subsection 914.201–5, paragraph (b) is deleted to remove the requirement to include the solicitation provision at 952.215–70, Required subcontractor representations and certifications. This solicitation provision is being deleted as noted below.

5. Subsection 915.406–5, paragraph (d) is deleted to remove the requirement to include the solicitation provision at 952.215–70, Required subcontractor representations and certifications.

6. Subpart 917.71 is deleted to remove obsolete coverage addressing Special Research Contracts with Educational Institutions. This type of contract has not been used by DOE for several years, and, pursuant to FAR 1.302, continued DEAR coverage is neither appropriate nor necessary to satisfy the specific needs of the agency.

7. Subsection 919.705–2, paragraph (a), fourth sentence is revised to remove the reference to special research contracts, which are no longer used by the Department.

8. Subparts 936.70 and 936.73 are deleted to remove obsolete coverage addressing Rental of Construction Equipment and the Outline for Equipment Rental Agreement. These procedures have not been used by DOE for several years, and, pursuant to FAR 1.302, continued DEAR coverage is neither appropriate nor necessary to satisfy the specific needs of the agency.

9. Section 943.301 is amended to remove language that is duplicative of FAR coverage addressing the use of Standard Form 30 for the deobligation of contract funds.

10. Subpart 952.1 is deleted to remove language addressing the incorporation of provisions and clauses by reference. The appropriate guidance is contained in the FAR.

11. Subsection 952.212–72 is revised to delete a reference to special research contracts, which are no longer used by the Department.

12. Subsection 952.215–70 is deleted to remove language addressing subcontractor representations and certifications. The appropriate guidance is contained in the FAR.

13. Subsection 970.0404–4(a)(3) is deleted to remove the requirement to include clause 970.5204–34, Sensitive Foreign Nations Control, in management and operating contracts. This clause applies solely to unclassified research contracts that may involve making unclassified information about nuclear technology available to certain sensitive foreign nations, and not to management and operating contracts which encompass broader missions than those contained in unclassified research contracts.

14. Section 970.2272 is amended to remove obsolete language addressing conflict of interest policies for management and operating contracts with colleges and universities. The referenced "Policy of the Federal Council for Science and Technology Relating to Conflicts of Interest by Staff Members of Colleges and Universities" is no longer utilized by DOE, and, pursuant to FAR 1.302, continued DEAR coverage is neither appropriate nor necessary to satisfy the specific needs of the agency.

15. Subsection 970.5204–12 is amended to clarify the prescription for use of alternate language in the clause which addresses the responsibility of management and operating contractors for the conduct of their employees.

16. Subsection 970.5204–34 is deleted to remove the requirement to include clause 970.5204–34, Sensitive Foreign Nations Control, in Management and Operating contracts. The clause does not apply to these contracts, as identified in the change to Subsection 970.0404–4(a)(3) above.

17. Subsection 970.5204–35 is amended to include a reference to Department of Energy Order 1240.2, Unclassified Visits and Assignments by Foreign Nationals, which had been omitted from the clause language.

II. Public Comments

These amendments were announced in a notice of proposed rulemaking in

the December 2, 1993, **Federal Register** (58 FR 63553). DOE invited interested persons to participate in this rulemaking by submitting data, views or arguments with respect to the DEAR amendments set forth in the notice of proposed rulemaking. The public comment period closed on January 31, 1994, a period of 60 days. During that period, no comments were received; however, comments were received from one interested party after the closing date and were subsequently considered by DOE prior to issuing this final rule.

The comments addressed DEAR 952.215–70, Required subcontractor representations and certifications, stating that the DEAR coverage did not recognize the dollar thresholds identified in the FAR for applicability of the representations and certifications to subcontractors. After review of these comments and the guidance contained in DEAR 952.215–70, it was determined that the requirements contained in FAR do not need supplementary coverage in the DEAR. Therefore, DEAR 952.215–70 will be deleted. Additionally, subsections 914.201–5(b) and 915.406–5(d) are deleted to remove the prescriptions for including this solicitation provision.

III. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will apply to States that contract with DOE; however, none of the revisions is substantive in nature.

F. Review Under the National Environmental Policy Act

DOE has concluded that this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.) (1976) or the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Parts 904, 905, 914, 915, 917, 919, 936, 943, 952, and 970

Government procurement.

Issued in Washington, DC, on May 4, 1994.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Parts 904, 917, 936, 943, and 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 904—ADMINISTRATIVE MATTERS

904.404 [Amended]

2. Section 904.404 is amended by revising the second sentence of paragraph (d)(3) to read as follows:

904.404 Contract clause.

(d) * * *

(3) * * * The contractor shall be provided at the time of award the listing of nations included in DOE 1240.2 (see current version.), Attachment 3, and any subsequent changes. * * *

* * * * *

904.601–71 [Amended]

3. Subsection 904.601–71 is amended in paragraph (b) by removing the words "special research contracts and" in the second sentence, and by removing the third sentence.

PART 905—PUBLICIZING CONTRACT ACTIONS

905.403–70 [Amended]

4. Subsection 905.403–70 is amended by removing paragraph (c).

PART 914—SEALED BIDDING

914.201–5 [Amended]

5. Subsection 914.201–5 is amended by removing paragraph (b).

PART 915—CONTRACTING BY NEGOTIATION

915.406–5 [Amended]

6. Subsection 915.406–5 is amended by removing paragraph (d).

PART 917—SPECIAL CONTRACTING METHODS

917.71 [Removed]

7. Subpart 917.71 is removed.

PART 919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

919.705–2 [Amended]

8. Subsection 919.705–2 is amended in paragraph (a), by removing the words "including special research contracts awarded pursuant to Subpart 917.71," in the fourth sentence.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

936.70 and 936.73 [Removed]

9. Subparts 936.70 and 936.73 are removed.

PART 943—CONTRACT MODIFICATIONS

943.301 [Amended]

10. Section 943.301 is amended by removing the first sentence in paragraph (c).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.1 [Removed]

11. Subpart 952.1 is removed.

952.212–72 [Amended]

12. Subsection 952.212–72 is amended by removing the words "special research contracts and" in the first sentence.

952.215–70 [Removed]

13. Subsection 952.215–70 is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

14. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

970.0404–4 [Amended]

15. Subsection 970.0404–4 is amended by removing paragraph (a)(3).

970.2272 [Amended]

16. Section 970.2272 is amended by removing the second sentence of paragraph (a).

970.5204–12 [Amended]

17. Subsection 970.5204–12 is amended by removing "NOTE: In contracts identified in 970.2272, the following paragraph shall be substituted for (c) above:" following the first paragraph (c) and adding "NOTE: The contracting officer may substitute the following paragraph for (c) above:" in its place.

970.5204–34 [Removed]

18. Subsection 970.5204–34 is removed.

970.5204–35 [Amended]

19. Subsection 970.5204–35 is amended by removing the phrase "specified in Attachment _____ to this contract," and adding the phrase "1240.2 (see current version.), Unclassified Visits and Assignments by Foreign Nationals," in its place.

[FR Doc. 94–11263 Filed 5–10–94; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 931235–4107; I.D. 050294B]

Pacific Halibut Fisheries

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

ACTION: Notice of in-season action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this in-season action pursuant to IPHC regulations approved by the United States Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Regional Director, telephone 907–586–7221; Gary Smith, Acting Regional Director, telephone 206–526–6140; or Donald McCaughran, Executive Director, telephone 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this in-season action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America (59 FR 22522, May 2, 1994). On behalf of the IPHC, this in-season action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the in-season action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 1

Northwest Treaty Tribes Fishery in Area 2A

Northwest treaty Indian tribes were allocated a total allowable catch of 192,500 pounds (lbs) (87.3 metric tons (mt)) in subarea 2A–1 (northern Washington coast) in 1994. Of this total, 16,000 lbs (7.3 mt) are reserved for ceremonial and subsistence purposes, leaving 176,500 lbs (80 mt) for the commercial fishery. Poor weather on the March 1 opening date resulted in canceling the fishery until March 5. Three fishing periods of 84 hours, 96 hours, and 30 hours respectively between March 5 and March 26 resulted in a total catch of 187,700 lbs (85.1 mt), exceeding the commercial catch limit by 11,200 lbs (5.1 mt).

Non-Treaty Commercial Fishing Period Limits in Area 2A

The Commission has determined that fishing period limits will be required during the 10-hour, July 6 non-treaty commercial fishing period in Area 2A to avoid exceeding the 178,750 lbs (81 mt) catch limit.

The following table of fishing period limits reflects the average catch by vessel class from openings without trip limits in Area 2A, adjusted by anticipated fleet size to avoid exceeding the catch limit:

Vessel class		Fishing period limit			
Length	Letter	Dressed, head-on		Dressed, head-off [1]	
		Pounds	Metric tons	Pounds	Metric tons
0–25	A	195	0.09	170	0.08
26–30	B	240	0.11	210	0.10
31–35	C	380	0.17	335	0.15
36–40	D	1,050	0.48	925	0.42
41–45	E	1,130	0.51	995	0.45
46–50	F	1,350	0.61	1,190	0.54
51–55	G	1,510	0.68	1,330	0.60
56+	H	2,275	1.03	2,000	0.91

[1] Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length and letter are printed on each halibut license. Decals showing the letter have been supplied with the license and should be displayed on the vessel.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight although fishermen are reminded that regulations require that all halibut from Area 2A be landed with their heads on.

The July 6 fishing period will begin at 8 a.m. and end at 6 p.m. The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Canadian Commercial Fishery in Area 2B

Canadian halibut landings from Area 2B have totaled 2.4 million lbs (907.2 mt) between March 1 and March 31. This fishery will continue until all Individual Vessel Quota's have been filled or November 15, whichever is earlier.

Annette Islands Reserve Fishery in Area 2C

The Metlakatla Indian Community has been authorized by the United States Government to conduct a commercial halibut fishery within the 3,000 foot (914.4 meters) Annette Islands Reserve waters. Fishing is restricted to 96 hours per month, and all catches are deducted from the Area 2C catch limit. Four 48-hour fishing periods in April and March produced a catch of just under 500 lbs (0.2 mt).

June Fishing Period Limits in Area 3B and 4A

The Commission has determined that fishing period limits will be required during the June 6 opening in Area 3B to avoid exceeding the catch limit. Last year, 5.2 million lbs (2,358.7 mt) were landed from Area 3B during the June fishing period, and this year's catch limit is 4.0 million lbs (1,814 mt). With fishing period limits in Area 3B, the Commission is concerned that some Area 3B fishermen might shift to Area 4A, thereby increasing the Area 4A catch. A shift of effort to Area 4A could jeopardize the August 15 fishing period, and possibly even result in exceeding the Area 4A catch limit. The Commission approved the June opening in Area 4A with the understanding that the catch would be minimal and that the August fishery would not be effected. Therefore, the fishing period limits in Area 3B will also be in effect in Area 4A. The fishing period in both areas will open at 12 noon on June 6 and close at 12 noon on June 7 with the following fishing period limits:

Vessel class		Fishing period limit (dressed, heads off)	
Length	Letter	Area 3B–4A	
		Pounds	Metric tons
0–25	A	900	0.4
26–30	B	1,300	0.6
31–35	C	4,000	1.8
36–40	D	5,200	2.4
41–45	E	8,400	3.8
46–50	F	11,800	5.4
51–55	G	17,400	7.9
56+	H	30,000	13.6

Dated: May 5, 1994.

David S. Crestin,

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

[FR Doc. 94–11296 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 675

[Docket No. 931100–4043; I.D. 050694A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for species in the rock sole/"other flatfish" fishery category by vessels using trawl gear in bycatch limitation zone 2 (Zone 2) of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to prevent exceeding the prohibited species bycatch allowance of *C. bairdi* Tanner crab to the trawl rock sole/"other flatfish" fishery category in Zone 2.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Senior Inseason Manager, Fisheries Management Division, NMFS, (907) 586–7228.

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

The 1994 prohibited species bycatch allowance of *C. bairdi* Tanner crab in Zone 2 for the trawl rock sole/"other flatfish" fishery category, which is defined at § 675.21(b)(1)(iii)(B)(*2*), was established as 260,000 crabs by the final

1994 initial specifications (59 FR 7656, February 16, 1994).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(ii), that the prohibited species bycatch allowance of *C. bairdi* Tanner crab for the trawl rock sole/"other flatfish" fishery in Zone 2 has been reached. Therefore, NMFS is prohibiting directed fishing for species in the rock sole/"other flatfish" fishery category by vessels using trawl gear in Zone 2 of the BSAI from 12 noon, A.l.t., May 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

Classification

This action is taken under 50 CFR 675.20 and is exempt from OMB review under E.O. 12866.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 6, 1994.

David S. Crestin,

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

[FR Doc. 94–11397 Filed 5–6–94; 1:16 pm]

BILLING CODE 3510–22–P

50 CFR Part 675

[Docket No. 931100–4043; I.D. 050694B]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary because the 1994 prohibited species bycatch mortality allowance of Pacific halibut specified for the trawl Pacific cod fishery in the BSAI has been reached.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), May 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Senior Inseason Manager, Fisheries Management Division, NMFS, (907) 586–7228.

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

The 1994 Pacific halibut bycatch mortality allowance for the trawl Pacific cod fishery, which is defined at § 675.21(b)(1)(iii)(E), is 1,200 metric tons (59 FR 7656, February 16, 1994).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iv), that the Pacific halibut bycatch mortality allowance for the trawl Pacific cod fishery has been reached. Therefore, NMFS is prohibiting directed fishing for Pacific cod by vessels using trawl gear in the BSAI from 12 noon, A.l.t., May 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

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

Classification

This action is taken under § 675.21 and is exempt from OMB review under E.O. 12866.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 6, 1994.

David S. Crestin,

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

[FR Doc. 94–11398 Filed 5–6–94; 1:16 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 90
Wednesday, May 11, 1994

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1927

RIN 0575–AB52

Real Estate Title Clearance and Loan Closing

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Real Estate Title Clearance and Loan Closing regulation. This action is necessary to make the FmHA loan closing procedure consistent with the private sector for commercial loans and to make loan closing requirements consistent with local laws and procedures that are typical in the area. The effect will be to provide the public with easy access to FmHA programs.

DATES: Comments must be received on or before July 11, 1994.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, SW, Washington, DC 20250. All written comments will be available for public inspection at the above address during regular working hours.

FOR FURTHER INFORMATION CONTACT: Walter B. Patton, Senior Loan Specialist, Farmers Home Administration, USDA, room 5334, South Agriculture Building, 14th and Independence Ave. SW., Washington, DC 20250, Telephone (202) 720–0099.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and the Office of Management and Budget (OMB) has determined that it is a "significant regulatory action."

Regulatory Flexibility Act

The undersigned has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect FmHA processing, real estate title clearance, and loan closing.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule will be submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). Public reporting for the collection of information is estimated to vary from five minutes to 1.5 hours per response, with an average of .38 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA, Ag Box 0743, Washington, DC 20250.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

Programs listed in the Catalog of Federal Domestic Assistance are as follows: Catalog Nos. 10.405, Farm Labor Housing Loans and Grants; 10.415, Rural Rental Housing Loans; and 10.416, Soil and Water Loans, are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983), and FmHA Instruction 1940–J. Catalog Nos. 10.404, Emergency Loans; 10.406, Farm Operating Loans; 10.407, Farm Ownership Loans; 10.410, Low Income Housing Loans, and nonprogram loans are excluded from the scope of Executive Order 12372.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (EO) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court Systems in that it meets all applicable standards provided in Section 2 of the EO.

Discussion

FmHA recognizes the need to make Real Estate Title Clearance and Loan Closing procedures more consistent with the laws and generally accepted loan closing practices of individual States. Some proposed changes in this rule will allow FmHA State Directors the authority to establish loan closing procedures that are applicable to the laws and customs of that particular State.

The significant proposed changes are listed below in general order of appearance in the regulation.

Several new definitions are added to help clarify certain issues. They include Closing Protection Letter, General Warranty Deed, Indemnification Agreement, Issuing Agent and Special Warranty Deed.

Due to differences in State laws regarding the use of title insurance and in the standard insurance coverage for errors and omission insurance and fidelity bond coverage, this proposed rule will allow FmHA State Directors to decide (with OGC approval) on the loan closing procedures and level of insurance coverage.

The requirement that Title Insurance Companies will provide an Indemnification Agreement (Closing Protection Letter) is added because it will greatly increase the insurance protection provided to the United States Government. This is a practice that Title Insurance Companies are familiar with and they understand our needs. An Indemnification Agreement can be provided for approved attorneys so the need for errors and omissions insurance and a fidelity bond can be eliminated. The agreement will provide loss coverage for the entire amount of the transaction with no deductible. The Indemnification Agreement will give FmHA protection from losses resulting from negligence or fraud caused by the

closing agent or their employees. Indemnification Agreements give FmHA greater protection against malpractice and fiduciary risks than the insurance policies required by our current regulations. There is no additional cost incurred by requiring an Indemnification Agreement.

This instruction suggests the use of Title Insurance for all loan closings. Approved attorneys can provide title insurance coverage as an agent for a Title Insurance Company and therefore not be excluded from being a closing agent. The advantages of Title Insurance are the Indemnification Agreement can be issued by the Title Insurance Company, addressed to FmHA, to protect FmHA against losses caused by the negligence of closing agents or employees. It will eliminate the need for errors and omissions insurance and a fidelity bond. The Indemnification Agreement will protect FmHA for 100 percent of the loan transaction, not a limited insured amount.

An attorney's opinion would provide limited coverage because the statute of limitations on an attorney's liability runs from 2 years to 8 years, depending on the State, from the date of the opinion. If the attorney's practice is interrupted, the means for correcting problems or collecting damages may become an issue.

List of Subjects for 7 CFR Part 1927

Loan programs—agriculture, Loan programs—housing and community development, Mortgages.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1927—TITLE CLEARANCE AND LOAN CLOSING

1. The authority citation for part 1927 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart B of part 1927 is revised to read as follows:

Subpart B—Real Estate Title Clearance and Loan Closing

Sec.

1927.51 General.
1927.52 Definitions.
1927.53 Costs of title clearance and closings of transactions.
1927.54 Requirements for closing agents.
1927.55 Title clearance services.
1927.56 Scheduling loan closing.
1927.57 Preparation of closing documents.
1927.58 Closing the transaction.
1927.59 Subsequent loans and/or transfers with assumptions.
1927.60 1927.61 [Reserved]
1927.62 Voluntary conveyances.
1927.63 1927.64 [Reserved]
1927.65 Additional requirements in connection with loans to homestead entrymen, contract purchasers of farm units from the Bureau of Reclamation, and certain American Indians.
1927.66 Cancellation of loan, assumption, or credit sale.
1927.67–1927.89 [Reserved]
1927.90 State supplements.
1927.91 Exception authority.
1927.92–1927.99 [Reserved]
1927.100 OMB control number.

Subpart B—Real Estate Title Clearance and Loan Closing

§ 1927.51 General.

(a) *Types of loans covered by this subpart.* This subpart sets forth the authorities, policies, and procedures for real estate title clearance and closing of loans, assumptions, voluntary conveyances and credit sales in connection with the following types of Farmers Home Administration (FmHA) loans: Farm Ownership (FO), Nonfarm Enterprise (FO–NFE), Emergency (EM), Operating (OL), Rural Housing (RH), Farm Labor Housing (LH), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Soil and Water (SW), Indian Land acquisition loans involving nontrust property, and NonProgram (NP) loans. This subpart does not apply to guaranteed loans.

(b) *Programs not covered by this subpart.* Title clearance and closing for all other types of FmHA loans and assumptions will be handled as provided in the applicable program instructions or as provided in special authorizations from the National Office.

(c) *Review by the Office of the General Counsel (OGC).* When required by applicable program regulations, such as for multi-family housing (MFH) organizations or other complex cases as determined by the State Director, the State Director will request OGC to review the docket and issue closing instructions.

§ 1927.52 Definitions.

Approval official. The FmHA employee who has been delegated the authority to approve, close, and service the particular kind of loan will approve an attorney or title company as closing agent to close these loans. If a loan must be approved at a higher level because of the dollar amount or for other reasons, the initiating office may approve the closing agent.

Approved attorney. A duly licensed attorney who provides title opinions directly to FmHA and the borrower or upon whose certification of title an approved title insurance company issues a policy of title insurance. Approved attorneys also close loans, assumptions, credit sales, and voluntary conveyances, and disburse funds in connection with FmHA loans.

Approved title insurance company. A title insurance company (including its local representatives, employees, agents, and attorneys) that issues a policy of title insurance. Depending on the local practice, an approved title insurance company may also close loans, assumptions, credit sales, and voluntary conveyances, and disburse funds in connection with FmHA loans. If the approved title insurance company does not close the loan itself, the loan closing functions may be performed by approved attorneys or closing agents authorized by the approved title insurance company.

Borrower. The party(ies) indebted after the loan, assumption, or credit sale is closed.

Certificate of Title. A certified statement as to land ownership, based upon examination of record title.

Closed loan. A loan is considered to be closed when the mortgage is filed for record.

Closing agent. The approved attorney or title company selected by the applicant and approved by FmHA to provide closing services for the proposed loan. Unless a title insurance company also provides loan closing services, the term "title company" does not include "title insurance company."

Closing protection letter. An agreement issued by an approved title insurance company which is an American Land Title Association (ALTA) form Closing Protection Letter (Rev. 3/27/87) or is otherwise acceptable to FmHA and which protects FmHA against damage, loss, or injury as a result or negligence by the issuing agent, approved attorney, or title company when title clearance is done by means of a policy of title insurance. Depending on the area, Closing Protection Letters may also be known as "Insured Closing Letters," "Indemnification Agreements," "Insured Closing Service Agreements," or "Statements of Settlement Service Responsibilities."

Cosigner. A party who joins in the execution of a promissory note or assumption agreement to guarantee repayment of the debt.

Credit sale. A sale in which FmHA provides credit to the purchaser(s) of FmHA inventory property. Title clearance and closing of a credit sale are the same as for an initial loan except the property is conveyed by quitclaim deed.

Exceptions. Exceptions include but are not limited to recorded covenants, conditions, restrictions, reservations, liens, encumbrances, easements, rights-of-way, leases, mineral, oil, gas and

geothermal rights (with or without the right of surface entry), timber and water rights, judgments, pending court proceedings, probate proceedings and agreements which limit or affect the title to the property.

Fee simple. An estate in land of which the owner has unqualified ownership and power of disposition.

FmHA. The United States of America acting through the Farmers Home Administration of the Department of Agriculture.

General warranty deed. A deed in which the grantor or seller warrants or guarantees as a whole that a good quality title is being conveyed.

Indemnification agreement. An agreement that protects FmHA against damage, loss, or injury as a result of negligence on behalf of the issuing agent, approved attorney, or Title Company. May also be known as: (1) Insured closing letter, (2) Closing protection letter, (3) Insured closing service agreement, (4) Statement of settlement service responsibilities, or letters which provide similar protection.

Issuing agent. An agent who performs loan closing services and who is authorized to issue title insurance for an approved title insurance company. This term includes "title company."

Land contract (Contract for Deed). This is a contract between the buyer and seller of land in which the buyer has the right to possession and use of the land and over a period of time (usually in excess of one year) makes periodic payments of a portion of the purchase price to the seller. The seller retains legal title to the property until the final payment is made, at which time the buyer will receive a deed to the land vesting fee title in the buyer. This is a security device whereby the seller finances a portion of the purchase price for the buyer.

Mortgage. Real estate security instrument, includes deed of trust and deed to secure debt. Forms FmHA 1927–7 "Real Estate Mortgage or Deed of Trust For _____" (state), FmHA 1927–11 "Warranty Deed (_____)" (state), and FmHA 1927–12 "Warranty Deed" (state) will be used to secure a mortgage to FmHA.

OGC. Refers to the United States Department of Agriculture (USDA) Regional Attorney, Associate Regional Attorney, or Assistant Regional Attorney, who provides legal counsel to FmHA for loan making and loan servicing actions.

Program regulations. Refers to the FmHA regulations for the particular loan program involved (e.g., subpart A of part 1944 for rural housing loans).

Quitclaim deed. A transfer of the grantors' interest in the title, without warranties or covenants. This type of deed is used by FmHA to convey title to purchasers of inventory property.

Seller. Individual(s) or other entity(ies) which are conveying ownership in real property to an FmHA applicant/buyer.

Special warranty deed. A deed containing a covenant whereby the grantor agrees to protect the grantee against any claims arising during the grantor's period of ownership.

Title clearance. Examination of a title and its exceptions to assure FmHA that the loan is legally secured and has the required priority.

Title defects. Any exception or legal claim of ownership (through deed, lien, judgement, or other recorded document), on behalf of a third party, which would prevent the seller from conveying a clear title to the entire property.

Vendee. The buyer.

Vendor. The seller.

Voluntary conveyance. A method of liquidation by which title to FmHA security is transferred by a borrower to FmHA by deed in lieu of foreclosure.

Warranty deed. A deed in which the grantor warrants that he/she has the right to convey the property, the title is free from encumbrances, and the grantor shall take further action necessary to perfect or defend the title.

§ 1927.53 Costs of title clearance and closings of transactions.

The borrower or the seller, or both, will be responsible for payment of all costs of title clearance and closing of the transaction and will arrange for payment before the transaction is closed. In voluntary conveyance cases to FmHA, these costs will be paid as provided in § 955.10(g) of subpart A of part 1955 of this chapter. In a case involving the purchase or sale of real estate, the option or sales contract must state who will pay the title clearance and closing costs. These costs will include any costs of abstracts of title, land surveys, attorney's fees, owner's and lender's policies of title insurance, obtaining curative material, notary fees, documentary stamps, recordation costs, tax monitoring service, and other expenses necessary to complete the transaction.

§ 1927.54 Requirements for closing agents.

(a) *Form of Title Certification.* The State Director will, with OGC approval, issue a state instruction specifying whether title insurance will be required at loan closing for some or all loans in the state or if, in some or all cases, a title opinion from an approved attorney will be sufficient. Title insurance is the recommended method for protecting FmHA interests. State Directors are authorized to require title insurance for all loan closings or some loan closings based on the type of loan and/or the geographical area of the state. If title insurance is used, State Directors are authorized to require a closing protection letter issued by an approved title insurance company to cover the closing agent, if such closing protection letters are customarily provided by title insurance companies in the state. The State Director's determination to require the use of title insurance will be based on the commercial and residential loan closing practices of the state and the economic and legal feasibility of obtaining title insurance.

(b) *General.* An attorney or title company may act as a closing agent and close FmHA real estate loans, provide necessary title clearance, and perform such other duties as are set forth in this subpart. A closing agent will be responsible for closing FmHA loans and disbursing both FmHA loan funds and funds provided by the borrower in connection with the FmHA loan. The borrower will select his or her closing agent. FmHA employees will not recommend the use of any particular closing agent or title insurance company, although as provided in § 927.54(a) the borrower may be required by a state instruction to provide title clearance with either a title insurance policy or an attorney's opinion. If title clearance is by an attorney's opinion, the approval official will approve the attorney who will perform the closing on a case-by-case basis in accordance with § 927.54(c) prior to loan closing. In such cases the attorney will be approved after submitting Form FmHA 1927–19, "Certification of Attorney." If title certification will be by means of a policy of title insurance, the title company which will issue the policy must have been approved in accordance with § 927.54(d).

(c) *Approval of attorneys.* Any attorney selected by an FmHA applicant, who will be providing title clearance where the certification of title is based on an attorney's opinion, must submit a completed Form FmHA 1927–19 certifying to professional liability insurance coverage and fidelity coverage of the attorney and the attorney's employees. The approval official will approve on a case-by-case basis any attorney who is duly licensed to practice law in the state where the real estate security is located and who

complies with the bonding and insurance requirements in this section. If the certification of title will be by means of title insurance, any attorney or closing agent designated as an approved attorney or closing agent by the approved title insurance company which will issue the policy of title insurance will be acceptable, and when covered by a closing protection letter, will not be required to obtain professional liability insurance or a fidelity bond, if the closing protection letter is the ALTA form Closing Protection Letter or provides at least equivalent protection to FmHA as the professional liability and fidelity insurance required in paragraphs (c) (1) and (2) of this section. Each approved title insurance company may provide a master list of their approved attorneys and closing agents, addressed to the FmHA State Director, that are covered by its closing protection letters.

(1) An attorney issuing an attorney's title opinion must have in full force and effect an acceptable professional liability insurance policy for errors and omissions. The State Director will determine the appropriate level of such insurance and what level of deductible is permissible according to what is customary in the area and necessary for the protection of FmHA. The State Director will issue a State Instruction specifying this coverage. Required insurance will, as a minimum, cover the amount of the loan to be closed.

(2) An attorney that is issuing an attorney's title opinion or, if title insurance is being obtained, an attorney or closing agent that is not covered by a closing protection letter must have in full force and effect a fidelity type bond. If partners, associates, or members of the staff of the attorney or closing agent have access to the funds in the escrow account, each such individual must either have a separate fidelity type bond to cover any fraudulent or dishonest act or such person(s) may be covered by a blanket fidelity bond. While it is recommended that $50,000 of protection be maintained for each individual person, the State Director will determine the appropriate level of insurance according to what is customary in the area and necessary for the protection of FmHA. The State Director will approve the form of the bond although Form FmHA 1927–18, "Fidelity Bond for Loan Closing Attorneys," is an optional form that is acceptable to FmHA and may be used.

(d) *Approval of title companies.* FmHA will approve any title insurance company which issues policies of title insurance in the state where the security property is located if the:

(1) Form of the owner's and lender's policies of title insurance to be used in closing FmHA loans are acceptable to the State Director, and will contain only standard types of exceptions and exclusions approved in advance by the approval official with the advice of OGC.

(2) Title insurance company is licensed to do business in the state (if a license is required) and is not Federally debarred or suspended.

(3) Title insurance company submits copies of audited financial statements, Form 9 financial statements, or other approved financial statements satisfactory to the State Director, which indicate that the company has financial ability to cover losses arising out of its activities as a title insurance company and under any closing protection letters issued by the title insurance company. The financial statements must also demonstrate that the title insurance company has sufficient resources to reimburse FmHA for any losses caused by fraud or dishonesty by the company and its authorized agents, or failure of the company or its authorized agents to follow or comply with FmHA's written closing instructions.

(4) Title insurance company agrees that the title insurance company employee or closing agent who supervises the closing of the transaction will be authorized to receive funds and give receipts for the company's charges.

(5) Above listed approval process will be repeated at least every 5 years, or more often if adverse information becomes available, to insure continued compliance by the title insurance company.

(e) *Responsibility of approval official.* In addition to approving closing agents, the approval official will inform all closing agents used in connection with FmHA closing of their duties and responsibilities under this subpart, applicable state supplements, and any changes or additional requirements which may be imposed. A package containing a copy of this subpart, applicable forms, state supplements, and other pertinent material will be provided to the closing agent as needed.

(f) *Conflict of interest.* A closing agent who has, or whose spouse, children, or business associates have, a financial interest in the real estate which will secure the FmHA debt cannot be involved in the title clearance or loan closing process. Financial interest includes having either an equity, creditor, or debtor interest in any corporation, trust, or partnership with a financial interest in the real estate which will secure the FmHA debt.

(g) *Debarment or suspension.* No attorney, title company, title insurance company, or closing agent, which has been debarred or suspended from participating in Federal programs, may participate in any aspect of the FmHA loan closing and title clearance process, in accordance with FmHA Instruction 1940–M.

(h) *Special provisions.* Closing agents are responsible for having current knowledge of the requirements of state laws in connection with loan closing and title clearance and should advise the State Director of any changes in state laws which necessitate changes in state mortgage forms and/or state supplements.

(i) *Rejecting closing agents or title insurance companies.* If the approval official (or the State Director for title insurance companies) cannot approve the closing agent selected by the applicant in accordance with paragraphs (c) or (d) of this section, the following actions will be taken:

(1) The attorney or closing agent will be notified within 5 business days of the specific reasons for rejection. No appeal rights will be given as the closing agent/attorney is not the direct recipient of program benefits.

(2) The applicant will be notified within 5 business days of the rejection. It is the applicant's responsibility to decide whether to continue with the rejected closing agent/attorney, if the reasons for rejection can be removed before any legal costs are incurred, or if another closing agent/attorney will be selected.

(3) If a title insurance company has requested approval, the title insurance company will be notified within 30 days after all relevant information requested by the State Director in connection with the approval decision has been received. If the title insurance company is rejected, it will be notified at that time of the specific reasons for rejection. No appeal rights will be given as the title insurance company is not the direct recipient of program benefits.

§ 1927.55 Title clearance services.

(a) *Responsibilities of closing agents.* Services to be provided to FmHA and the borrower by a closing agent in connection with the transaction vary depending whether a title insurance policy, or title opinion are being furnished. The closing agent is expected to perform these services without unnecessary delay. Delay in providing services without justification may be grounds for not approving the closing agent in future cases.

(b) *Initial responsibility of approval official.* The approval official will

furnish the closing agent with Form FmHA 1927–4, "Transmittal of Title Information," all the information and documents called for therein (including waivers, easements, and FmHA forms), and any information not contained in this subpart regarding FmHA policies and procedures applicable to the type of transaction involved.

(c) *Ordering title services.* The approval official will notify the borrower and seller, if applicable, that an attorney or title company must be employed to examine the title and perform other services in connection with the closing of the transaction. Application for title examination or insurance will be made by the borrower to an attorney or title company. Application for mortgage title insurance will be on a form which has been approved by the approval official. The mortgagee policy will be for at least the amount of the loan. The United States of America will be named as the mortgagee insured. Attorney services may be requested in the form of FmHA Guide Letter No. 1927–B–1 (available in any FmHA office).

(d) *Use of title opinion.* If a title opinion will be issued, a title examination will include searches of the records, or certificates from the clerks of the appropriate State courts, Federal Bankruptcy courts and United States district courts, for the period determined necessary by local custom, to issue a title opinion. A Form FmHA 1927–9, "Preliminary Title Opinion," Form FmHA 1927–10, "Final Title Opinion," or a certificate of title will be issued to the approval official. If either form is not legally sufficient in a particular state, an OGC approved state form will be used. The closing agent will determine:

(1) The legal description and all owner(s) of record of the real property,

(2) Whether there are any outstanding mortgages, liens, judgments or pending suits in Federal or State courts (as disclosed by a lis pendens or other similar notice of a pending lawsuit), and advise the approval official and borrower of the nature and legal effect of outstanding interests or exceptions such as liens, encumbrances, leases, easements, covenants, conditions, restrictuions, reservations, and rights relating to mineral, oil, gas, geothermal, timber and water rights (including the presence or absence of the right of entry by holder of such rights), prior sales of part of the property judgments, probate proceedings or pending court actions affecting the real property or other outstanding exceptions or interests to assist in determining:

(i) Whether the outstanding interests or exceptions affect the value of the property or its operation, and

(ii) Which exceptions must be corrected in order for the borrower(s) to obtain good and marketable title of record in accordance with prevailing title examination standards, and for FmHA to obtain a valid lien of the required priority.

(3) Whether there are outstanding Federal or State tax claims (including taxes which under state law may become a lien superior to a previously attaching mortgage lien),

(4) Whether outstanding judgments of record, bankruptcy, insolvency, or probate proceedings involving any part of the property, whether already owned by the borrower, or to be acquired by assumption or with loan funds, or involving the borrower or the seller exist,

(5) If a water right is to be included in the security for the loan. The closing agent must attach a full legal description of the water right,

(6) If wetlands easements or other conservation easements have been placed on the property,

(7) If there are any liens or recorded claims which would prevent FmHA from obtaining an enforceable mortgage lien of the required priority on the security property, and

(8) If there are any exceptions of record.

(9) What measures are required for preparing, obtaining, or approving curative material, conveyances, and security instruments,

(10) Provide copies of these interests and exceptions as requested by the approval official.

(e) *Use of title insurance.* When title insurance is to be obtained, the approval official will be furnished with a title insurance binder disclosing any defects in, and encumbrances against, the title, the conditions to be met to make the title insurable, and the curative or other actions to be taken before closing of the transaction. The binder must include a commitment to issue a mortgagee and owner's title policy in an amount at least equal the amount of the loan. In the case of an assumption without a subsequent loan, the existing policy may be continued if the coverage meets or exceeds the assumption balance and the title company agrees in writing to extend coverage in full force and effect.

(f) *Approval official's responsibilities after receipt of preliminary title opinion or title insurance binder.* Upon receipt of the preliminary title opinion or title insurance binder, the approval official will:

(1) Check the opinion or binder carefully. If any required information is omitted, or if the standard form of opinion or binder is amended, the approval official will return it for completion or correction. If the closing agent is unable or unwilling to comply, the approval official will send the opinion or binder with a full explanation to OGC through the State Director for advice.

(2) Check the legal description of the land, water rights, rights-of-way, easements, and other security involved, to determine that the description covers all of the property rights intended to be taken as security.

(3) Review all exceptions to title shown in the preliminary title opinion or title insurance binder. The approval official will determine which exceptions must be modified, eliminated or waived, or whether an agreement with prior lienholders is necessary or advisable to protect FmHA's interests. If prior encumbrance(s) will remain, the approval official should obtain and review a copy of each to insure that its terms are acceptable to FmHA. If an option or sales contract which lists acceptable exceptions is involved, the approval official will determine whether the exceptions in the preliminary title opinion or title insurance binder are the same as those in the option or sales contract and inform the applicant of discrepancies. If the approval official has any doubt as to the acceptability or effect of any exception, the applicant will be requested to obtain a clarification. The approval official will consult with the closing agent and/or the State Director when necessary to determine the acceptability of any exception. If the approval official determines that any defects cannot be corrected, or the effect of certain exceptions on the title, suitability, security value, or successful operation of the property is not clear, and they cannot be corrected or eliminated without undue expense, the approval official will forward the preliminary title opinion or title insurance binder to the State Director together with comments regarding the objectionable features and copies of the exceptions when needed.

(i) If, with the advice of OGC, the State Director determines that the exceptions will not adversely affect the title to the property or its suitability, security value, or successful operation, the State Director will advise the approval official. The approval official will then arrange for closing.

(ii) If the State Director, with the advice of OGC, finds that these exceptions will adversely affect the title

to the property, its suitability, security value, or successful operation, the State Director may waive them conditionally and instruct the approval official as to how the conditions may be met, or instruct the approval official that the loan cannot be closed because of the defect.

§ 1927.56 Scheduling loan closing.

The approval official may arrange a closing when he/she determines that exceptions shown in the preliminary title opinion or title insurance binder (if any) will not adversely affect the suitability, security value, or successful operation of the property.

(a) The approval official will make sure that all requirements of subpart I of part 1940 of this chapter have been met before the loan is closed.

(b) In arranging for loan closing, the approval official will send Form FmHA 1927–15, "Loan Closing Instructions/ Loan Closing Statement For," to the the closing agent. When a title insurance commitment is involved, the "loan closing instructions" will include any corrections required by the commitment. Therefore, the title insurance commitment must be received before the final closing instructions are transmitted. At the same time, send written notification of loan closing to the applicant. For single family housing loans Form FmHA 1927–16, "Notification of Loan Closing," will be used to notify the applicant.

§ 1927.57 Preparation of closing documents.

(a) *Preparation of deeds.* The closing agent will prepare, complete, or approve deeds necessary for title clearance and closing of the transaction. FmHA forms will be used whenever possible.

(1) *Types of estates for married borrowers.* If the borrowers are married, FmHA prefers, but will not require, that title to the real estate will be held in such a way that, upon the death of a borrower, it will pass to the surviving spouse by law to prevent the real estate from being tied up in probate proceedings. Title may be held in any manner that permits obtaining the required mortgage.

(2) *Deeds will be prepared as follows:*

(i) Conveyances of title to borrowers by parties other than FmHA will be by general warranty deed. If a general warranty deed cannot be obtained, a special warranty deed, quitclaim deed, or grant deed may be used if the entity providing title clearance (closing agent) determines that the deed used will vest in the borrower a good and marketable title of record. All conveyances by FmHA will be by quitclaim deed.

(ii) The deed to the security property will show the exceptions to which the title is subject and should, where customary, contain a tie-in description showing that it covers the same land or part of the same land as that designated or described in another deed or mortgage described specifically by date, parties, and recording data.

(iii) Each deed should recite legal consideration.

(b) *Preparation of mortgages.* The closing agent will insure that all mortgages are properly prepared, completed, executed, and filed for record. Where applicable, the mortgages should recite that it is a purchase money mortgage. The following requirements will be observed in preparing FmHA mortgages:

(1) *Real estate mortgage forms.* FmHA mortgage forms will be used in all cases and other FmHA forms will be used whenever possible. Form FmHA 1927–1, "Real Estate Mortgage or Deed of Trust For _____," (state) will be used for all insured and direct loans except where Form FmHA 1927–7 (State), is used for all rural housing loans. These forms will be prepared and distributed in accordance with state supplements. When a loan is made to a homestead entryman or to a contract purchaser of a farm unit from the Bureau of Reclamation, a rider to Form FmHA 1927–1 will be used per state supplement.

(2) *Number of copies.*

(i) The original recorded mortgage is to be retained in the borrower's case file unless the original mortgage is retained by the recorder, and a conformed copy will be provided to the borrower.

(ii) When the original is to be retained by the recorder, an original and two conformed copies will be prepared. One conformed copy will be retained in the borrower's case file and one conformed copy will be provided to the borrower.

(iii) Extra copies of mortgages may be needed in individual cases in some participation loans, loans on reclamation projects, when security is taken on trust or restricted property involving loans to Native American, and other similar situations.

(iv) The closing agent will distribute copies to appropriate parties at loan closing or as soon as possible thereafter.

(3) *Persons required to execute mortgage.* The mortgage will be executed by the borrower and all other persons having an interest in the real property being mortgaged whose execution is necessary for FmHA to have the required lien priority, (for example, a spouse's right of dower or curtesy) so that, in the event of default, the mortgage will be enforceable against all such interests. Persons signing the promissory note and the mortgage will use exactly the same names which appear on the title.

(i) When the applicant is a corporation or cooperative, the mortgage will be executed by the authorized officers on behalf of the corporation or cooperative. Authorization must be granted to the officers by either:

(A) The Articles of Incorporation and Bylaws, or

(B) A duly adopted resolution of the board of directors authorizing such execution and indicating which officers are authorized to execute the loan documents on behalf of the corporation/ cooperative, unless applicable FmHA instruction or state law prohibits. The resolution must bear the certification of the corporate/cooperative secretary that it was duly adopted and not revoked and have the corporate seal affixed, if applicable, to be acceptable. When shareholder approval is necessary the resolution must recite that shareholder approval has been obtained.

(ii) When the applicant is a partnership, the mortgage must be executed by the partners required by the partnership agreement to execute loan documents on its behalf.

(iii) When the applicant is a trust, the requirements of the trust agreement and state law shall control as to who is authorized to execute the loan documents.

(4) *Date of Execution.* The mortgage will be dated and executed on the same date as the promissory note. If necessary, the mortgage may be done on a different date provided it is not executed before the date of the note or after the date of closing.

(5) *Title exceptions.* The mortgage will specifically describe all exceptions it will be subject to, if customary under local practice or required by state law or state supplement. The exceptions will normally be shown as part of or immediately following the legal description of the land and must be the same as shown on the final title opinion or mortgagee policy of title insurance. In cases where specific description of each exception to title is not customary or required, these exceptions may be described by use of a general statement similar to the following (unless inconsistent with applicable State law): "Subject, however, to all outstanding covenants, conditions, restrictions, reservations, liens, encumbrances, easements, rights of way, leases, mineral, oil, gas and geothermal rights (with or without the right of surface entry), timber rights, water rights, judgements, pending court proceedings,

probate proceedings and agreements which limit the title to the property."

(6) *Releasing or retaining existing mortgages in refinancing cases.* When there is an outstanding FmHA real estate mortgage against the property and the loan secured by the mortgage is being refinanced with the current loan, the mortgage for the outstanding loan will be superseded and will be released at the time of loan closing, unless it is necessary under state law to keep the existing mortgage in effect to retain a valid lien of the same priority for the obligation being refinanced.

(7) *Describing notes in mortgages.* In most cases, only the note(s) for the new loan(s) needs to be described when a subsequent loan is made and a subsequent mortgage is taken. The note(s) for any unpaid loan(s) secured by real estate will not be described in the mortgage unless the approval official determines:

(i) It is necessary to do so to protect the government's interest,

(ii) The description of the unpaid prior secured note(s) in the mortgage being taken would not result in a higher title insurance premium for the new mortgage, or

(iii) State law requires that all original notes be presented when filing a security instrument. A State supplement should reflect this exception when applicable.

(8) *Determining due date of final installments.* The "Due Date of Final Installment," as shown in the mortgage, is determined by adding the number of years over which the loan is payable to the date of the promissory note: for example, if the note is dated March 30, 1987, and the final payment is due and payable 20 years from that date, the "Due Date of Final Installment" is March 30, 2007.

(9) *Alteration of mortgage form.* A mortgage form may be altered pursuant to a state supplement having prior approval of the National Office, or in a special case, to comply with the terms of loan approval prescribed in accordance with program instructions. No other alterations in the printed mortgage forms will be made without prior approval of the National Office. Any changes made by deletion, substitution, or addition (excluding filling in blanks) will be initialed in the margin by all persons signing the mortgage.

(10) *Special requirements imposed by program instructions.* Some program instructions require that the mortgage forms be modified. In such cases, either OGC or the approval official will modify the FmHA mortgage form as specified. The closing agent will make sure that the modification has been made prior to execution of the mortgage.

(11) *Mortgages on leasehold estates.* When the FmHA security interest is a leasehold estate, unless state law or state supplement otherwise provides, the Forms FmHA 1927–1 or FmHA 1927–7 will be modified as follows:

(i) In the space provided on the mortgage for the description of the real property security, the leasehold estate and the land covered by the lease must be described. The following language must be used: "All of borrower's right, title and interest in and to a leasehold estate for an original term of _____ years, commencing on _____, 19 _____, created and established by and between _____ as lessor and owner and _____ as lessee, including any extensions and renewals thereof, a copy of which lease was recorded/filed in book _____, page _____, as instrument number _____, in the Office of the (e.g., County Clerk), for the aforesaid county and state and covering the following real property: _____."

(ii) Immediately preceding the covenant starting with the words "should default," the following covenant will be added: "( ) Borrower covenants and agrees to pay when due all rents and any and all other charges required by said lease, to comply with all other requirements of said lease, and not to surrender or relinquish, without the government's prior written consent, any of borrower's right, title or interest in or to said leasehold estate or under said lease while this mortgage remains of record."

(12) *Mortgages on land purchase contract.* When the FmHA security interest is on a borrower's interest in a land purchase contract, OGC will provide language to be used to modify the Form FmHA 1927–1 or FmHA 1927–7.

(13) *Legal description.* The legal description on the mortgage should be taken directly from the title insurance commitment or the title abstract to insure accuracy of the legal description.

(c) *Preparation of the promissory note.* The closing agent will make sure that the promissory note (or assumption agreement) is completed in accordance with the forms manual insert (FMI), and executed. The approval official will determine who is to execute the promissory note, including cosigners, if necessary, in accordance with program instructions and provide the closing agent with the names of these individuals. If the applicant is a corporation, partnership, or trust, the approval official will provide the name(s) and title(s) of the individual(s) executing the promissory note on behalf of the entity. Any other signatures on the note (or assumption agreement) needed to insure the required security, as provided in state supplements, will be obtained. Persons having a disability of minority or mental incompetency, or persons who have not been legally admitted for residency in the U.S., its territories, or possessions, are not to execute the promissory note. The date shown on the note will be the date it is executed by the borrower which may not be later than the date of the mortgage.

(d) *Preparation of protective instruments.* The closing agent will properly prepare, complete, and/or approve releases and curative documents necessary for title clearance and closing, in recordable form and record them if required.

(1) *Prior lienholder's agreement.* If any liens (other than FmHA liens or tax liens to local governmental authorities) or security agreements (hereafter called "liens"), with priority over FmHA's mortgage will remain against the real property securing the loan(s), the lienholders must execute, in recordable form, agreements containing all of the following provisions:

(i) The prior lienholder shall agree not to declare the lien in default or accelerate the indebtedness secured by the prior lien for a specific period of time after notice to FmHA. The agreement must:

(A) Provide that the specified period of time will not commence until the lienholder gives written notice of the borrower's default and the prior lienholder's intention to accelerate the indebtedness to the FmHA office servicing the loan,

(B) Include the address of the FmHA servicing office,

(C) Give FmHA the option to cure any monetary default by paying the amount of the borrower's delinquent payments to the prior lienholder, or pay the obligation in full and have the lien assigned to FmHA, and

(D) Provide that the prior lienholder will not declare the lien in default for any nonmonetary reason if FmHA commences liquidation proceedings against the property and thereafter acquires the property,

(ii) When the prior lien secures future advances, including the lienholder's costs for borrower liquidation or bankruptcy, which under state law have priority over the mortgage being taken (or a FmHA mortgage already held), the prior lienholder shall agree not to make advances for purposes other than taxes, insurance or payments on other prior liens without written consent of the State Director.

(iii) The prior lienholder shall consent to FmHA making (or transferring) the loan and taking (or retaining) the related mortgage if the prior lien instrument prohibits a loan or mortgage (or transfer) without the prior lienholder's consent.

(iv) The prior lienholder shall consent to FmHA transferring the property subject to the prior lien after FmHA has obtained title to the property either by foreclosure or voluntary conveyance if the prior lien instrument prohibits such transfer without the prior lienholder's consent.

(2) *Notice of foreclosure agreements.* These agreements will be obtained only when required by a state supplement. As a precautionary measure, the state supplement will require notice agreements when OGC determines that state law permits junior liens of private parties to be extinguished by foreclosure of a prior lien without the junior lienholder being made parties or being given actual notice. The state supplement will specify the number of days within which notice of foreclosure is required by the agreement.

(3) *Leaseholds.* When the FmHA security interest is on a leasehold, the approval official must review the lease to make sure that it meets the security and duration requirements of the program instructions. If not, it will be necessary for the landlord and tenant to amend the lease to meet these requirements at closing.

(4) *Agreement by holder of vendor's interest under land contract.* If the buyer's interest in the security property is that of a buyer under a land contract, it will be necessary for the seller (vendor) to execute, in recordable form, an agreement containing all of the following provisions:

(i) The vendor shall agree not to sell or voluntarily transfer the vendor's interest under the land contract without the prior written consent of the FmHA State Director.

(ii) The vendor shall agree not to encumber or cause any liens to be levied against the property.

(iii) The vendor shall agree not to commence or take any action to accelerate, forfeit or foreclose the buyer's interest in the security property until a specified period of time after notifying the State Director of intent to do so. This period of time will be ninety (90) days unless a state supplement otherwise provides. The agreement shall give FmHA the option to cure any monetary default by paying the amount of the buyer's delinquent payments to the vendor, or paying the vendor in full and having the contract assigned to FmHA.

(iv) The vendor shall consent to FmHA making the loan and taking a security interest in the borrower's interest under the land contract as security for the FmHA loan.

(v) The vendor shall agree not to take any actions to foreclose or forfeit the interest of the buyer under the land contract because FmHA has acquired the buyer's interest under the land contract by foreclosure or voluntary conveyance, or because FmHA has subsequently sold or assigned the buyer's interest to a third party who will assume the buyer's obligations under the land contract.

(vi) When FmHA acquires a buyer's interest under a land contract by voluntary conveyance or foreclosure, FmHA will not be deemed to have assumed any of the buyer's obligations under the contract, provided that the failure of FmHA to perform any such obligations while it holds the buyer's interest is a ground to commence an action to terminate the land contract.

(5) *Form of agreement.* The form of prior lienholder's agreement, forbearance agreement, notice of foreclosure or assignment, and agreement by holder of vendor's interest under land contract will be prescribed in a state supplement with the concurrence of OGC. When only forbearance agreements are needed, they will be obtained on Form FmHA 1927–8, "Agreement with Prior Lienholder," or, if that form is not legally satisfactory, on a state form having the same title. When only notice of foreclosure or assignment are required, a separate form for this purpose will be used. When both forbearance agreements and notices of foreclosure or assignment are required, Form FmHA 1927–8 may be amended in order to serve both purposes, a substitute state form may be used for both purposes, or Form FmHA 1927–8 may be used and the notice agreement obtained on a separate state form.

(6) *Executing, acknowledging, and recording.* When an agreement is required by paragraphs (d)(1), (d)(2), (d)(3), or (d)(4) of this section, the closing agent will determine at the time of closing that the agreement is properly completed, executed, sealed, witnessed, acknowledged, and recorded as required by state law or state supplement.

(e) *Correction of errors in recorded security instruments.* A state supplement, subject to OGC's review and approval, will be issued to provide guidance in correcting error(s) in recorded security instruments.

§ 1927.58 Closing the transaction.

The closing agent will cooperate with the approval official, the borrower and the seller, and other necessary parties to arrange the time and place of closing. The closing agent will make sure that FmHA obtains a valid mortgage lien on the property of the priority required by FmHA, subject only to any defects and exceptions approved by the approval official or State Director. The "Date of Closing" will be considered to be the date that the note and mortgage are signed, and the loan closing process takes place.

(a) *Disbursement of loan funds.* When the closing agent indicates that the conditions necessary to close the loan have been met, loan funds will be forwarded to the closing agent. Loan funds will not be disbursed prior to filing of the mortgage for record; however, when necessary, loan funds may be placed in escrow before the mortgage is filed for record and disbursed after it is filed. No development funds will be kept in escrow by the closing agent after loan closing. Loan funds for the payment of a lien may be disbursed only upon receipt of a discharge, satisfaction, or release (or assignment where necessary to protect the interests of FmHA).

(b) *Title examination and liens or claims against borrowers.* The closing agent will examine the title for liens against the property and claims against the borrower from the terminal date of the preliminary title examination up to and including the time of recording the current mortgage. If there are no entries of record during the period, except the documents required in connection with title clearance and any partial release(s) or subordination(s) previously approved by FmHA, the transaction may be closed. If there are other entries of record during this period, the transaction will not be closed until these entries have been cleared of record or administratively approved. The closing agent will advise the approval official of the nature of such intervening instruments and the effect they may have on obtaining a valid mortgage of the priority required or the title insurance policy to be issued.

(c) *Taxes and assessments.* The closing agent will determine if all taxes and assessments against the property which are due and payable are paid at or before the time of loan closing. If the seller and the borrower have agreed to prorate any taxes or assessment which are not yet due and payable for the year in which the closing of the transaction takes place, the seller's proportionate share of the taxes and assessments will be deducted from the proceeds to be

paid to seller at closing and will be credited to the amount required to be paid by borrower at closing. Certificates or receipts should be produced from the taxing authorities to show that taxes or assessments which are due and payable have been paid and, if possible, the certificates or receipts, or copies, will be kept in the borrower's County Office or District Office case file. Appropriate prorations as agreed upon between the borrower and seller may also be made for taxes paid by the seller which are applicable to a period after the closing date, common area maintenance fees, prepaid rentals, insurance (unless the borrower is to obtain a new policy of insurance) and growing crops.

(d) *Affidavit regarding work of improvement—(1) Execution by borrower.* The closing agent will require that a Form FmHA 1927–5, "Affidavit Regarding Work of Improvement," be completed and executed (including acknowledgment) when a loan is being made to a borrower who already owns the real estate to be mortgaged. This affidavit will be executed by the borrower at closing.

(2) *Execution by seller.* The closing agent will require that Form FmHA 1927–5 be completed and executed (including acknowledgment) by the seller when the FmHA is making a loan to a borrower to enable the borrower to acquire the property (including transfers). This affidavit will be executed by the seller at closing.

(3) *Legal insufficiency of affidavit form.* If Form FmHA 1927–5 is not legally sufficient in a particular state, a state form approved by OGC will be used. A similar form that may be required by a title insurance company may be substituted for Form FmHA 1927–5.

(4) *Recording.* The affidavit will not be recorded unless the closing agent deems it necessary and state law permits.

(5) *Delay in closing.* The loan will not be closed if, at the loan closing, the seller (in a sale transaction) or the borrower (in a nonpurchase money loan situation) indicates that construction, repair or remodeling has been commenced or completed on the property, or related materials or services have been delivered to or performed on the property within the time limit specified in the affidavit, unless a state supplement otherwise provides. The closing agent will notify the approval official, who will determine if the work of improvement will result in a lien prior to the FmHA lien. The State Director will, with the advice and concurrence of OGC, provide in a state supplement the period of time to be used in completing the affidavit.

(e) *Completion of closing documents.* The closing agent will determine that deeds, promissory notes, mortgages, releases, and other curative instruments are completed in accordance with the FMI (sealed and witnessed if required by state law) and, if necessary, acknowledged and filed for record at the proper time.

(f) *Assignment of future income.* If Form FmHA 443–16, "Assignment of Income from Real Estate Security," is required in a particular case, the approval official will prepare the form and have it available for execution by the borrower when the transaction closes. The closing agent will see that the form is properly completed, executed (sealed and witnessed if required by state law), and acknowledged by the borrower.

(g) *Return of loan documents to approval official after loan closing.* Within one day after loan closing, the closing agent will return completed and executed copies of Form FmHA 1927–15, the promissory note, all other documents required for loan closing (except the mortgage), and the final title opinion or policy of title insurance to the approval official. If the recorded mortgage is customarily returned to the borrower or closing agent after recording, then it must be forwarded to the approval official immediately.

(h) *Final opinion or mortgage title policy.* As soon as possible after the transaction has been closed:

(1) *Final opinion.* The attorney will issue a final opinion to FmHA and the borrower on Form FmHA 1927–10, "Final Title Opinion." If that form is not legally sufficient in a particular state, a state form approved by OGC may be used. Issuance of the final opinion should not be held up pending the return of recorded instruments. If it is not possible for the final title opinion to show the book and page of recordation of the FmHA security instrument, the words "and is recorded" in paragraph II B of Form FmHA 1927–10 may be deleted and the following blank space completed to show the filing office and the filing instrument number if available. Attached to the final opinion will be required documents then available, including any which the approval official has furnished to the attorney which were not previously returned. The attorney will ensure that all recorded instruments are forwarded or delivered, to the proper parties after recording. The certification of title will be forwarded for a voluntary conveyance.

(2) *Mortgagee title policy.* The closing agent will send or deliver the mortgagee title policy, with the United States listed as mortgage holder, to the approval official. The policy will be subject only to standard exceptions and those outstanding encumbrances, exceptions, reservations, and other defects approved by the approval official. If an owner's policy of title insurance is requested, the closing agent will send or deliver it to the borrower. The closing agent will ensure that all recorded instruments are delivered or sent to the proper parties after recording.

(3) *Responsibilities of the approval official.* The approval official will check the final title opinion or mortgagee title policy to make sure that the lien priority required in the loan approval has been obtained. Form FmHA 1927–15 will be checked to see that funds were disbursed as authorized. If these conditions have not been met, the approval official will report it to the State Director for advice.

(i) *Other services of the closing agent.* (1) The closing agent will assist the approval official in preparing, completing, obtaining execution, acknowledgment, and recording the required documents when necessary. Standard FmHA forms will be used whenever possible. The closing agent will keep the approval official advised as to the progress of title clearance and preparation of material for closing the transaction.

(2) The closing agent will provide services for voluntary conveyances as set forth in § 1927.62 of this subpart, and § 1955.10 of subpart A of part 1955 of this chapter.

§ 1927.59 Subsequent loans and/or transfers with assumptions.

Title services and closing for subsequent loans to an existing borrower will be done in accordance with previous instructions in this subpart, except that:

(a) *Loans closed using title insurance.* (1) Title insurance will only be obtained if:

(i) Additional land is being acquired,

(ii) An initial loan is being refinanced with a subsequent loan,

(iii) An additional loan is being made where the prior secured loan was not subject to title clearance (e.g. where the prior loan was secured by the best mortgage obtainable), or

(iv) An additional section 504 loan is being made where the previous loan was unsecured, or secured for less than $7,500 and the outstanding debt amount plus the new loan exceeds $7,500.

(2) When a new mortgagee title policy is required,:

(i) It will cover the entire real property which is to secure the loan, including the real property already owned and any additional real property being acquired by the borrower with the loan proceeds.

(ii) Title insurance coverage will be obtained for the entire amount of any subsequent loan plus the amount of any existing loan being refinanced. If the existing loan is not being refinanced, the new mortgagee policy will insure only the amount of the subsequent loan.

(b) *Loans closed using title opinions.* Unless the approval official is aware of problems with or discrepancies in the original title opinion, the title will be researched back to the date of the last FmHA mortgage, except when the conditions of paragraph (a)(1) (i), (ii), or (iii) of this section exist. In these cases, the title will be examined in accordance with § 1927.55 of this subpart.

(c) *Title services required in connection with assumptions.* This is set forth in subparts A, B, and C of part 1965 of this chapter as appropriate for the loan type.

§§ 1927.60–1927.61 [Reserved]

§ 1927.62 Voluntary conveyances.

When a borrower offers to convey security, the approval official will process and close the transaction according to § 1955.10 of subpart A of part 1955 of this chapter. The closing agent will issue a certification of title stating that title is vested in the United States of America subject only to FmHA liens or prior liens previously approved by FmHA in accordance with § 1955.10 of subpart A of part 1955 of this chapter.

§§ 1927.63–1927.64 [Reserved]

§ 1927.65 Additional requirements in connection with loans to homestead entrymen, contract purchasers of farm units from the Bureau of Reclamation, and certain American Indians.

Whenever loans or assumptions are subject to agreements with other agencies (e.g. loans to or assumptions by homestead entrymen, American Indians, or contract purchasers from the Bureau of Reclamation), the title clearance and closing of the transaction will be handled in accordance with special instructions issued by FmHA and/or other parties involved applicable to the type of transaction, as well as those of this subpart. The special instructions may be in form of a Memorandum of Understanding with the advice and approval of OGC.

§ 1927.66 Cancellation of loan, assumption, or credit sale.

If it is determined that the transaction will not be closed, the approval official will promptly notify the borrower and the following parties who are involved in the case at the time the determination is made: the seller, attorney(s), OGC, and the title company.

§§ 1927.67–1927.89 [Reserved]

§ 1927.90 State supplements.

The state supplement issued pursuant to this subpart will have prior National Office approval and will be the minimum necessary to comply with state laws.

§ 1927.91 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with applicable law or opinion of the Comptroller General. The Administrator may exercise this authority upon written request from the State Director or an Assistant Administrator provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Request for exception must be supported with documentation to explain adverse effect on the Government's interest, proposed alternative courses of actions, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1927.92–1927.99 [Reserved]

§ 1927.100 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0147. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 1.5 hours per response, with an average of .38 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0575–0147), Washington, D.C. 20503.

Dated: March 1, 1994.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–11311 Filed 5–10–94; 8:45 am]

BILLING CODE 3410–07–U

NUCLEAR REGULATORY COMMISSION

10 CFR PART 2

RIN 3150–AE85

Summary Report on the Status of Petitions for Rulemaking; Frequency

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing an amendment to its regulations that would reduce the frequency of the summary report on the status of petitions for rulemaking, which is included in the NRC Regulatory Agenda, from quarterly to semiannually. The proposed action is necessary because the NRC intends to reduce the publication of the NRC Regulatory Agenda from quarterly to semiannually as the status of rulemaking actions and petitions for rulemaking is not subject to frequent change. The proposed rule is intended to reduce the level of NRC staff effort, paperwork, and distribution costs.

DATES: Comment period expires June 10, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays.

Copies of any comments received may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, Telephone (301) 492–7086 or Toll Free 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

In a letter dated December 30, 1976, Ms. Karen J. Husemeyer submitted a

petition for rulemaking with the NRC. The petition was docketed as PRM–2–4, and a notice of receipt was published in the **Federal Register** of February 24, 1977 (42 FR 10911). The petitioner requested that the NRC annually review each petition having a docket number. The petitioner also requested that the status of proposed rule changes be made part of an administrative report that would be subject to public review.

In response to this petition for rulemaking, the NRC amended its rules of practice governing the receipt and processing of petitions for rulemaking on October 31, 1977 (42 FR 56950). In the final rule, the NRC stated that it would prepare a summary report on the status of petitions for rulemaking on a quarterly basis and make this report available for public inspection and copying in the Public Document Room. The provision concerning the preparation and availability of the summary report on petitions for rulemaking is codified at 10 CFR 2.802(g). This report was published under the heading "NRC Petitions for Rulemaking" until April 29, 1982, when it was incorporated into the NRC Regulatory Agenda and published in the **Federal Register** (47 FR 18508).

On November 9, 1979, the Commission also requested that a quarterly summary be prepared for rulemaking efforts not associated with petitions for rulemaking. The NRC staff prepared a report that indicated the status of proposed rules and advance notices of proposed rulemaking for the period of January through March 1980. Although this was a one-time report, the Commission later recommended that the report be updated each quarter. This report was published under the heading "Status of Proposed Rules:" It was subsequently replaced by the NRC Regulatory Agenda, first published in the **Federal Register** on October 29, 1981 (46 FR 53594).

The NRC Regulatory Agenda is a compilation of all rules on which the NRC has recently completed action, has proposed action, or is considering action, and all petitions for rulemaking that have been received by the Commission and are pending disposition. The NRC Regulatory Agenda provides the public with basic information regarding currently active NRC rulemaking activities and petitions for rulemaking. Since 1982, the NRC Regulatory Agenda has been updated and issued each quarter as NUREG–0936.

The NRC also prepares and submits an agenda of its rulemaking activity for inclusion in the Unified Agenda of Federal Regulations, which is updated semiannually and published in the **Federal Register**. The Regulatory Flexibility Act (5 U.S.C. 602) requires that agencies publish semiannual regulatory agendas describing the regulatory actions they are developing that could have an impact on small entities. Executive Order 12866 establishes minimum standards for an agency's agenda, including specific types of information for each entry and publication in a uniform format. The NRC meets these public information requirements through its participation in the Unified Agenda of Federal Regulations. The Unified Agenda of Federal Regulations contains the same information concerning the NRC rulemaking activity that is published in the NRC Regulatory Agenda.

Proposed Action

The Commission believes that the continued publication of the NRC Regulatory Agenda on a quarterly basis is unnecessary. The content and the status of the rulemaking actions and petitions for rulemaking do not change frequently enough to justify a quarterly publication. The NRC believes that a semiannual publication schedule is sufficient to inform the public of the NRC's rulemaking activity and of the current status of NRC's active rulemakings and petitions for rulemaking. The NRC Regulatory Agenda would continue to be published in January and July of each year. Section 2.802(g), which concerns the frequency of the status of petitions for rulemaking, would be revised to reflect this change. The NRC would continue to publish an updated agenda of its rulemaking actions in the Unified Agenda of Federal Regulations each April and October.

To better inform the public of the status of NRC rulemakings, the NRC is exploring alternatives to make the information in the Regulatory Agenda available through electronic communications, such as via an electronic bulletin board. The NRC will make its next issuance of the Regulatory Agenda available in an electronic format on an electronic board that is accessible to the public.

Also the NRC has established a computer bulletin board whereby the public can obtain a copy of the proposed rule entitled, "Radiological Criteria for Decommissioning of Nuclear Facilities," and submit comments on this proposed rule via electronic communication. The NRC is exploring mechanisms to make this type of public access to rulemakings available for additional rulemakings in the future. In addition, the NRC routinely invites the public to submit comments on proposed rules in an electronic format.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

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.).

Regulatory Analysis

The NRC has not prepared a regulatory impact analysis for this proposed rule because it is an administrative action that would reduce the frequency of the summary report on the status of petitions for rulemaking, as included in the NRC Regulatory Agenda, from quarterly to semiannually.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. This is an administrative action that would reduce the frequency of the summary report on the status of petitions for rulemaking, as included in the NRC Regulatory Agenda, from quarterly to semiannually. This proposed action would have no economic impact on any NRC license, including small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the

Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.802, paragraph (g) is revised to read as follows:

§ 2.802 Petition for rulemaking.

* * * * *

(g) The Director, Division of Freedom of Information and Publications Services, Office of Administration, will prepare a summary of petitions for rulemaking before the Commission. The report will be prepared semiannually and include the status of each petition. A copy of the report will be available for public inspection, and copying for a fee, in the Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Dated at Rockville, Maryland, this 2nd day of May 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–11437 Filed 5–10–94; 8:45 am]

BILLING CODE 1590–01–P–M

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10 CFR Part 26

Consideration of Changes to Fitness-For-Duty (FFD) Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for Information and Comments.

SUMMARY: In response to a Federal court decision, the Nuclear Regulatory Commission (NRC) is evaluating its approaches for designation of persons who should be subject to the random drug testing at nuclear power plants, in particular whether employees without direct safety-related duties (e.g., clerical staff) must be subject to random testing. In the evaluation, the NRC staff identified several issues that have a significant bearing on whether the current approach should be revised. Public comments are requested on these issues to aid the NRC staff in completing their evaluation. If any changes are developed to current regulations as a consequence of this evaluation, these proposed changes will again be published in the **Federal Register** for public comments. If a revised rule is later adopted, these changes would apply to all licensees authorized to construct or operate nuclear power reactors and to all licensees authorized to possess, use, or transport Category I nuclear material.

DATES: The comment period expires August 9, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: *Mail written comments to:* U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Copies of the NRC staff's report, "Evaluation of Scope of Persons Subject to Random Drug Testing" (Enclosure 1 to SECY–94–016), and comments received may be examined (and/or copied for a fee) at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Copies of NUREG/CR–1879, NUREG/CR–5227, and Supplement 1 to NUREG/CR–5227 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082 or from the National Technical Information Service, 5282 Port Royal Road, Springfield, VA 21161. A copy may be examined (and/or copied for a fee) in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles H. Hendren, Safeguards Branch, Division of Radiation Safety and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, (301) 504–3209.

SUPPLEMENTARY INFORMATION:

Background

In *International Brotherhood of Electrical Workers (IBEW)* v. *NRC*, 966 F.2d 521 (9th Cir. 1992), the United States Court of Appeals for the Ninth Circuit upheld the NRC's denial of a request by the IBEW on behalf of Diablo Canyon's nuclear workers for an exemption from NRC's random drug-testing requirements. The labor union requested the exemption for bargaining unit members in clerical, maintenance, and warehouse positions. While declining to upset the exemption denial on the record before the court, the three-judge panel questioned the NRC's justification for imposing random drug tests on workers (particularly routine clerical workers) with no direct safety functions and no authorized unescorted access to the vital areas of the plant. (The Diablo Canyon administrative building is in the protected area, and administrative workers are subject to random drug testing because they have unescorted access to the protected area. A number of other plants also have administrative buildings inside their protected areas.)

Because the Court of Appeals affirmed the exemption denial, the NRC is under no immediate legal obligation to take any action. However, the NRC believes

that a careful study of the issue raised by the court is in order. Therefore, the NRC staff conducted an initial study, "Evaluation of Scope of Persons Subject to Random Drug Testing" (Enclosure 1 to SECY–94–016), which is available in the Public Document Room as specified in the ADDRESSES portion of this Notice. This study evaluated issues relative to random drug-testing of clerks, secretaries, or other employees who have unescorted access to a nuclear plant's protected area, but whose own jobs are not directly safety-related and provide no opportunity for precipitating or escalating a safety-related incident at a nuclear power plant.

Before the effective implementation date of the Fitness-For-Duty (FFD) Rule (January 3, 1990), licensees had various programs to control substance abuse. However, these programs were not uniform in their procedures, testing methods, standards, or sanctions for substance abuse. Most of the programs did include (1) preemployment drug testing, (2) for-cause drug testing, (3) employee assistance programs, (4) behavioral observation, and (5) some type of training on the problems associated with substance abuse. Not all licensees had random drug testing as an element of their program; in some cases, random testing was precluded because of union intervention or prohibition by State laws.

In developing the FFD Rule, the scope of random drug testing was one issue that received considerable attention. In the **Federal Register** notice for the proposed rule published on September 22, 1988 (53 FR 36795), the Commission solicited comments on the appropriateness of the worker categories identified for testing. At 53 FR 36817, the Commission indicated that it was proposing that the rule apply to all persons who have been granted unescorted access to protected areas because (1) current programs are implemented in accordance with the Commission's Policy Statement on Fitness-for-Duty of Nuclear Power Plant Personnel published on August 4, 1986 (51 FR 27921), which applies to all persons within protected areas at nuclear power plants; (2) these persons could introduce and sell/distribute drugs in the workplace; and (3) any person under the influence of these substances could cause a safety hazard, if not to the general public, to the user and to fellow workers.

Many of the public comments on the proposed rule addressed the scope of random testing. Most comments supported random testing for all persons granted unescorted access to protected areas. However, a considerable number of comments objected to random testing provisions of the rule. A number of the comments asserted that random testing was unnecessary and that many of the individuals granted unescorted access to protected areas have no potential for precipitating or escalating a safety-related incident. Some comments recommended that only those workers who may potentially affect the health and safety of the public be covered. For the final rule, the NRC chose not to reduce the scope of persons subject to random testing.

Currently, the FFD Rule requires licensees authorized to operate or construct a nuclear power reactor to implement an FFD program that applies to "all persons granted unescorted access to protected areas, and to licensee, vendor, or contractor personnel required to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with the licensee's emergency plans and procedures." Licensees authorized to possess, use, or transport formula quantities of nuclear material were recently required to initiate FFD programs and are not included in this analysis. Persons who come under the FFD program are subject to the drug testing provisions, which include random drug tests.

Discussion

Random drug testing involves two distinct functions: (1) Random selection of persons to be tested, and (2) collection and analysis of test specimens. The random selection process is used to ensure that all persons subject to drug testing will have an equal probability of selection for testing at any time. Random drug testing is also a very strong deterrent to substance abuse.

In developing the FFD Rule, the NRC decided to specify random drug testing because of a concern about the threat that substance-impaired workers posed to the public health and safety. Based upon comments received during rulemaking, the Commission concluded that all workers with unescorted access to protected areas of operating nuclear power plants should be included within the scope of the rule. However, some workers have argued that they do not perform safety-related functions and have now questioned whether random testing is an undue encroachment on individual expectations of privacy. See *International Brotherhood of Electrical Workers, Local 1245* v. *NRC*, 966 F. 2d 521 (9th Cir. 1992). Other viewpoints contend that expectations of privacy are diminished when workers apply for and accept jobs in the nuclear industry because job applicants willingly agree to significant privacy encroachments including preemployment urinalysis tests, detailed background investigations, security and fingerprint checks with the Federal Bureau of Investigation, credit checks, and psychological assessments. Accordingly, the Commission is now reassessing the scope of random urinalysis testing as applied to workers without safety-related duties to ensure a proper balance between safeguarding individual rights and the Commission's responsibility to protect public health and safety.

At nuclear power reactors, the safety risks from someone using illegal drugs or abusing alcohol arise from the potential for that person to inadvertently or deliberately take actions that could affect plant safety. The safety risks from inadvertent acts primarily involve impairment caused by substance abuse and the effect of that impairment on the person's ability to perform safety-related functions. Although the Commission has no information that would indicate that a person is more susceptible to coercion or blackmail due to drug abuse than from any other activity, there is a perception that the safety risks from deliberate acts come from the susceptibility of a substance abuser to be coerced or influenced into deliberately damaging a nuclear power plant, whether or not that person has safety-related duties. For example, the person could lose their inhibitions while under the influence or could be blackmailed into some act against the plant by someone aware of that person's substance abuse.

Objective data establishes a relationship between substance abuse, impairment, and inadvertent acts [NUREG/CR–5227, "Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues"], but the staff's review of the relevant literature suggests that insufficient scientific data exist to directly link substance abuse to the performance of deliberate (or malicious) acts. However, it has been clearly shown that, as human error rates increase, the risks to plant safety will increase significantly. [See NUREG/CR–1879, "Sensitivity of Risk Parameters to Human Errors in Reactor Safety Studies for a PWR."] It has also been shown that substance abuse can sufficiently impair a worker's motor skills and judgment that accidents attributable to neglect and human error become significantly more probable. [See NUREG/CR–5227 and Supplement 1 to NUREG/CR–5227.]

Information reported to the Commission indicates that arrests for sale and distribution of illegal

substances inside nuclear power plant protected areas have decreased markedly since January 1990 when the FFD Rule was implemented. Prior to the FFD Rule, a number of cases involving the sale and distribution of illegal substances at nuclear power plants were reported, as described in the staff's report cited previously. The persons arrested for on-site sale and distribution of drugs included both safety-related and non-safety-related workers. The job categories included clerks, custodial workers, craftpersons, and engineers. Since implementation of the FFD Rule, however, only one case of this type has been reported to the Commission by a nuclear power plant licensee. Two of the more significant deterrents added by the FFD Rule were: (1) The requirement for random drug testing, and (2) the five-year minimum revocation of unescorted access for persons determined to have been involved in the sale, use, or possession of illegal drugs within a protected area.

The threat of someone either inadvertently or deliberately damaging or manipulating equipment that affects plant operations or could result in radiological consequences arises from that person having access to the equipment. Persons whose tasks involve design, operation, or maintenance of that equipment represent a greater potential threat because of their familiarity and more direct access to that equipment. Safeguard measures that protect against someone from inside the organization are intended to counter this threat by ensuring that persons who have an opportunity to operate or manipulate any equipment affecting plant functions are not impaired and are trustworthy and reliable. To achieve these goals, the Commission believes that although there are substantial unknowns currently associated with the true detection and deterrence effectiveness of random testing, the use of random drug testing provides an effective means for both detecting and deterring the use of illegal drugs or abuse of alcohol.

The fundamental approaches for selecting those to be included in a random testing program are to either test everyone (the "universal" approach) or to test only those in "safety-sensitive" positions. Proponents of the universal approach contend that the safety-sensitive approach tends to be discriminatory in that blue-collar workers are tested but management is not. Proponents of the safety-sensitive approach contend that random testing should be limited to only workers in positions where a direct link to safety exists. The NRC's current approach is a combination of these two fundamental approaches. The NRC's approach tests everyone who has unescorted access to a protected area and, therefore, tests everyone who has an opportunity to operate or manipulate important systems and equipment that could challenge the safe operation or emergency shutdown capability of a nuclear power plant.

To satisfy the intended objective of random drug testing, one approach would be to base the decision on who should be randomly tested on a person's access to equipment that could, if manipulated, cause a safety problem. This is a conservative approach and does not take into account the abilities and skills of persons who may have access. For someone who has access and whose tasks do not include safety-related activities, the approach assumes they present some risk of either inadvertently or deliberately causing safety problems.

Nuclear power plant security requirements provide distinct security boundaries where personnel access is controlled. The nuclear power plant protected area is one of these boundaries and is defined as an area encompassed by physical barriers to which access is controlled (10 CFR 73.2). Protected areas contain components and systems that are important to plant operations and whose failure could result in challenges to more critical plant systems and components. The NRC staff's evaluation study cites numerous cases where reactors have been tripped and safety systems challenged as a result of accidents that occurred in protected areas. Since 1987, there have been over two thousand "events" that caused reactors to be scrammed.

Within protected areas are vital areas. Vital areas contain equipment, systems, devices, or material, the failure, destruction, or release of which could directly or indirectly endanger the public health and safety by exposure to radiation. Unescorted access from protected areas into vital areas is controlled and limited to persons who require access to perform their duties.

An approach based on unescorted access to protected areas results in a large variation among sites in the number of people subject to random testing. Many power reactor sites have few administrative or technical work stations inside their protected areas. At these sites, most workers who have unescorted access also have job functions directly related to plant operations and require access to one or more vital areas. However, a number of power reactor sites have administrative and technical support buildings located inside protected areas. At these sites, many workers who have unescorted access only to protected areas (and not to vital areas) do not have tasks directly related to plant operations or maintenance.

Another approach to designating who would be subject to random testing would be to base the decision on tasks the person performs. This approach recognizes that people whose tasks directly involve plant safety have the access, the opportunity, and the knowledge to cause a safety problem. This approach addresses more directly the safety problems that might be caused by a person who is impaired due to substance abuse. Many positions and tasks are fairly well defined at nuclear facilities. A core of individuals such as plant operators, maintenance personnel, and quality control inspectors have tasks that are clearly subject to NRC regulations and directly involve safety-related activities. However, the relationship of some positions to plant safety is more difficult to establish.

One ongoing NRC activity that could affect considerations for changes in regulatory requirements for persons subject to random testing is a study of security requirements associated with the insider threat. There have been some indications that access control safeguards could, in some circumstances, make it much harder for reactor operators to maintain control of a plant. The NRC staff is considering whether reductions are possible in the safeguards that control access into vital areas from protected areas. Substantial reductions in the access control safeguards for vital areas could alter the safety impact assessments for optional approaches to random drug testing. These safety assessments are based to some degree on the use of access controls to segregate persons having access to vital areas from persons whose access is limited to protected areas (i.e., persons who do not have access to vital areas). Depending on how much importance is given to concerns about deliberate acts based on influence from illegal drug or alcohol abuse, future relaxation of the safeguards to control access into vital areas from protected areas could significantly affect any considerations for narrowing the scope of persons subject to random testing.

To assist in the ongoing evaluation of the scope of random testing, the Commission seeks comments on the proposed alternative approaches to the scope of random testing and other related issues. Further information on these alternative approaches is contained in the NRC staff's report cited

previously. This study addressed five options for the scope of random testing. The first option is maintaining the existing random drug testing scope, which is based on personnel access to a particular location. Option 2, which would exclude certain groups of workers from the random testing pool, and Option 3, which would apply random testing to persons who have access only to vital areas, represent relatively simple variations of the current program. Options 2 and 3 would narrow the pool of individuals subject to random testing. Option 4 would base the scope of random testing on the tasks the person performs. Option 5 would allow alternative testing (in lieu of urinalysis) for workers in certain defined positions. For all five options, it is assumed that the other elements of the FFD program (such as suitable inquiries, preaccess testing, and for-cause testing) will remain applicable to all workers who are given unescorted access to protected areas. Specifically, comments are requested on the following:

1. Should the Commission retain the current scope of the random drug testing requirements in 10 CFR part 26, which requires that all persons granted unescorted access to protected areas at nuclear power plants be subject to random drug testing? (Option 1)

2. Should the Commission revise the scope of the 10 CFR part 26 random drug testing requirements to adopt one or more of the following approaches?

a. Exclude from random drug testing certain groups of workers (e.g., clerical, administrative) who have unescorted access to protected areas but not to vital areas. (Option 2)

b. Limit random drug testing to only those workers who have unescorted access to vital areas of nuclear power plants. (Option 3)

c. Limit random drug testing to workers whose jobs involve safety- or security-related functions regardless of whether these workers have unescorted access to protected areas. (Option 4)

d. Allow use of alternative testing methods in lieu of urinalysis for certain groups of workers who have unescorted access to protected areas (but not to vital areas) only because their normal workstations are within a protected area of the nuclear power plant. These methods could include performance-based testing, even though there are current technical limitations, primarily varying degrees of detectability, reliability, sensitivity, and accuracy. (See also question 7, below.) (Option 5)

3. For each of the four approaches above (2.a–2.d), what are the potential effects on risk to public health and safety or on vulnerability of nuclear power plants resulting from accidental acts and deliberate acts such as sabotage or vandalism? Will vulnerability or risk increase or decrease to any significant degree, or will they remain unchanged?

4. What would be the expected effect on the need for random drug testing under each of the four approaches above (2.a–2.d) if vital area access controls are reduced (e.g., allowing certain vital area doors to normally be unlocked, but be capable of (i) being remotely locked on demand in the event of a security contingency, and (ii) generating an alarm if a vital area door is opened without an authorized keycard)?

5. Does substance abuse increase the probability of a person committing a deliberate act such as sabotage or vandalism? These acts might be caused by indirect influences of drugs on a person's attitude or susceptibility to being influenced by others. What data exist to show a relationship between substance abuse and deliberate acts? Is random drug testing an appropriate means to control the risk of deliberate acts associated with substance abuse and, at the same time, not encroach unreasonably into individual privacy expectations?

6. Does the Commission's policy in 10 CFR part 26 deter the introduction of illegal substances into protected areas of nuclear power plants? If so, what aspect(s) of the FFD program creates this deterrent effect? If not, should the Commission require licensees to implement measures to cause this deterrent effect, and what type of measures should be required? (Information describing the measures and their effectiveness in sufficient detail to show the cause and effect relationship between the deterrent measure and the resulting reduction/elimination of illegal substances being brought into the workplace would be useful.)

7. Should the Commission continue to investigate new testing methods that could be used for all workers who have unescorted access to protected areas? What are some methods that might be acceptable and effective alternatives to the existing approach? For proposed methods, please provide data that establishes accuracy (i.e., test's error rate), specificity (i.e., degree to which the test can measure what it's supposed to measure), reliability (i.e., the precision with which the test can be repeated and the consistency of test results), and similar supporting parameters. The Commission is specifically interested in data on the validity of performance testing measures.

Dated at Rockville, Maryland, this 4th day of May 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 94–11294 Filed 5–10–94; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0812]

Truth in Savings; Proposed Regulatory Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Board is withdrawing proposed amendments to Regulation DD (Truth in Savings) to provide for an additional formula to calculate the annual percentage yield (APY), based on considerations of cost and regulatory burden at this time.

DATES: This proposed rule is withdrawn May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, Kyung Cho, or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for questions associated with the regulatory flexibility analysis, Gregory Elliehausen, Economist, Office of the Secretary, at (202) 452–2504; for the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Truth in Savings Act (12 U.S.C. 4301 et seq.) requires depository institutions to provide disclosures to consumers about their deposit accounts, including an APY on interest-bearing accounts. The law also contains rules about advertising deposit accounts, including accounts at depository institutions offered to consumers by deposit brokers. The act is implemented by the Board's Regulation DD (12 CFR part 230), which became effective June 21, 1993. (See final rule published on September 21, 1992 (57 FR 43337), correction notice published on October 5, 1992 (57 FR 46480), and amendments published on March 19, 1993 (58 FR 15077).

In its initial rulemaking, the Board was guided by several general principles, such as establishing simple rules that minimize the possibility of errors and compliance costs and providing institutions with flexibility to promote a variety of product choices for consumers. This included designing a simple, easy-to-use formula for calculating the APY. As deposit brokers and institutions began complying with the new formula, the Board was asked by the Securities Industry Association (SIA) and others to reconsider how the APY is calculated. Proposed amendments that would provide for an additional APY formula were published on December 6, 1993 (58 FR 64190).

The difficulties associated with the current APY formula stem from the formula's assumption that interest paid on an account remains on deposit until

maturity. For some accounts, the formula produces an APY that reflects the time value of interest received.[1] For others the APY fails to reflect the time value of interest received. This happens in cases where institutions offer long-term certificates of deposit (CDs) that are noncompounding but pay interest periodically. In this case, the formula produces an APY that is less than the contract interest rate.[2]

In considering whether to propose amendments to the APY formula, the Board focused on two issues: a desire for an APY that reflects the time value of money, and a concern about the compliance costs and impact on depository institutions if changes were made. The Board published a proposal that would factor into the APY calculation the specific time intervals for interest paid on the account—that is, the time value of money (Approach A). However, the Board also requested comment on a narrower approach that would affect only noncompounding multi-year CDs that pay interest at least annually. For these accounts, the APY would never be lower than the interest rate (Approach B). The Board also solicited comment on leaving the regulation unchanged (Approach C).

The Board received about 500 comments on its proposal. Nearly 90% of the comments were from financial institutions. Considering all comments received, approximately 5% supported Approach A; 15% supported Approach B; and 75% supported Approach C. The remainder presented other alternatives or expressed no opinion on the specific approaches.

(2) Discussion

Approach A: Proposal of an Additional Formula

Based on the comments received and upon further analysis, the Board is withdrawing the proposed amendments to the APY formula. Overall, the Board believes that the proposed formula (Approach A) would be complex and costly to implement, and the costs would outweigh the benefits derived from the proposed changes. (See Docket R–0836 elsewhere in today's **Federal Register** for proposed amendments which the Board believes might better capture the intent of the act's purposes in a less complex way.)

The Board believes the formula proposed in December would correct the APY anomalies produced by the current formula, and has considered the view of some commenters that the short-term costs of correcting the formula might be worthwhile over time. However, the Board is more persuaded by the commenters—including both consumer groups and industry associations—that believed the costs of compliance outweigh the benefits from implementing the proposed APY formula. Commenters reported that substantial costs recently had been incurred to implement the regulation, and they believed the distinctions in the APY produced by the complex formula proposed by Approach A did not warrant the substantial costs of implementing changes to the regulation—perhaps as much as 50% of the initial costs to implement the regulation.

The Board concurs with the commenters that voiced concern about the complexity of the proposed formula. These commenters noted that the formula was complex for both consumers and institutions. Many commenters stated that although an internal rate of return formula is a standard mathematical tool in the financial markets, its introduction in APY calculations would eliminate, as a practical matter, the use of many handheld calculators for preparing disclosures or quoting APYs to consumers. Commenters also noted due to the complexity of the APY calculation there would be an increased risk of error and potential civil liability in making this calculation for a wide variety of accounts.

The Board also notes the views of commenters that believed that in adopting Approach A, the Board would merely be trading one set of assumptions for another set of assumptions. Many commenters concurred with the Board that the current APY does not always reflect the value of periodic interest distributions, for example. But they also believed that the proposed APY also would not be factually accurate in all circumstances. For example, commenters remarked that the proposed APY would fail to reflect the fact that interest payments cannot always be immediately reinvested at the same rate as the account from which the interest was paid. They also believed it would be inappropriate to assume such a reinvestment rate for small monthly interest checks, for example, since rates typically rise based on the length of maturity and amount of principal. They noted that elderly consumers who hold multi-year CDs and who rely on periodic interest payments for living expenses would be particularly affected by the assumption.

Commenters noted that returns on deposit accounts traditionally have been based on the rate of interest paid and any compounding frequency. Higher yields historically have been equated with higher dollar interest payments—not more frequent interest payments—and commenters believed that consumers expect an APY to reflect those factors. Many commenters believed that the underlying premise of Approach A—the time value of money—is inappropriate for deposit account disclosures. Many believed an assumption based on potential earnings outside the account relationship was misleading for the APY calculation. They believed the purposes of Truth in Savings are not best served by an APY disclosure based on the timing of interest payments that is higher for consumers who receive less interest overall.

Due to concerns about costs and questions about the benefits provided, the Board believes this approach would not be the best solution.

Approach B: Noncompounding Multi-Year CDs

The Board also is not adopting Approach B, based on the combination of the limited scope of the problem Approach B seeks to address, the creation of new anomalies, and the cost to the industry of reviewing and implementing new calculation and disclosure requirements.

On the one hand, the Board believes Approach B is a simple, direct approach to correct one anomaly produced by the current APY formula. The Board also recognizes that the disclosure of an APY that is lower than the interest rate on a noncompounding multi-year CD that pays interest at least annually may be confusing to some consumers.[3]

Overall, however, the Board is more persuaded by commenters that voiced concern about the accuracy of the APY disclosed under Approach B. For

[1] For example, assume $1,000 is deposited in a one-year CD with a 6% interest rate that compounds quarterly. Consumers have the option to receive quarterly interest checks instead. In both cases, the APY is 6.14%, even though the consumer who compounds interest receives $61.40, and the consumer who takes quarterly interest checks receives $60.00.

[2] For example, assume $1,000 is deposited in a two-year noncompounding CD with a 6.00% interest rate. Some institutions may offer the consumer the choice of receiving all interest ($120) at maturity, or receiving two interest payments ($60) each year. The APY in either case is 5.83%—lower than the 6.00% interest rate—because the formula looks at the total amount of interest paid, not when it is paid out. The SIA states the maturities of CDs purchased through deposit brokers range from three months to 10 years but average about two years (based on dollar-weighted maturities).

[3] The Board notes, however, that even if Approach B were adopted, institutions would still disclose an APY lower than the interest rate, such as for a multi-year CD that does not compound and pays interest only at maturity.

example, commenters echoed concerns expressed about the proposed formula in Approach A. They remarked that the APY permitted under Approach B assumed the interest payments received during the term would be reinvested at the same rate as the account from which the interest was paid. Others believed it would be anomalous to disclose the same APY is disclosed for two multi-year accounts, one compounding annually and the other not compounding at all.

The Board also notes the commenters' concerns about the cost to the industry of reviewing and implementing new calculation and disclosure requirements. They noted the costs of implementing Approach B would be less significant, compared to Approach A. Although the change would affect a single class of accounts, commenters reported that some computer programming changes would be required and additional disclosures would be appropriate. Commenters stated that since consumers would see the same APY for compounding and noncompounding CDs, a statement might be necessary in advertisements and account disclosures to help consumers understand the terms of the account. (For example, assume two institutions offer a two-year CD with a 6.00% interest rate. One compounds annually, the other offers annual interest payments. Both could advertise a 6.00% APY, even though a consumer depositing $1,000 receives $120 if interest checks are paid and $123.60 if interest is compounded.) Finally, the Board notes some commenters remarked that institutions could easily remedy the current anomaly with a simple change to their product. They noted institutions could advertise and disclose an APY equal to the contract interest rate under the current formula by offering CDs that have annual compounding, regardless of any payment options.

Due to the limited problem Approach B seeks to address, the limited resolution of anomalies produced by the current APY formula, and the costs associated with adopting the approach, the Board has determined not to adopt Approach B.

(3) Regulatory flexibility analysis and Paperwork Reduction Act

The Board solicited comment on the potential cost of implementing the proposed APY formula, such as the proportion of existing accounts would require the new formula for computing APYs, the changes institutions would have to make to implement the new formula, the cost to make these changes, and the likelihood of changes in the number of different account terms and types of accounts offered would result if the new formula were adopted.

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the proposed revisions were reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of comments received during the public comment period. The Board's Office of the Secretary has prepared an economic impact statement on the proposed revisions to Regulation DD, a copy of which may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3245.

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

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11153 Filed 5-10-94; 8:45 am]

BILLING CODE 6210-01-P

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12 CFR Part 230

[Regulation DD; Docket No. R-0836]

Truth in Savings; Proposed Regulatory Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation DD (Truth in Savings) which clarify that once interest is credited to an account, it becomes part of the principal. By defining terms such as "crediting," and "compounding," the amendments will provide certainty to institutions, better fulfill the purposes of the act, and eliminate anomalies that currently occur in the APY calculation. The amendments provide that for institutions that pay interest (that is, credit interest) to the consumer by check or transfer or permit interest to remain in the account, an institution must pay interest on funds that remain in the account at the same frequency as the institution credits interest by check or transfer. Accounts that credit interest solely by posting to the account would not be required to send out interest checks or to transfer the interest to other accounts. Similarly, institutions offering accounts that "credit" interest solely by paying it out to the consumer by check or transfer would not be required to permit credited interest to remain in the account for compounding.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments should refer to Docket No. R-0836, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, Kyung Cho, or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for questions associated with the regulatory flexibility analysis, Gregory Elliehausen, Economist, Office of the Secretary, at (202) 452-2504; for the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Truth in Savings Act (12 U.S.C. 4301 *et seq.*) requires depository institutions to provide disclosures to consumers about their deposit accounts, including an annual percentage yield (APY) on interest-bearing accounts. The act is implemented by the Board's Regulation DD (12 CFR part 230), which became effective June 21, 1993 (See 57 FR 43337 and 58 FR 15077).

Because the current formula for calculating the APY assumes that interest remains on deposit until maturity, the resulting APY may—but does not always—reflect the time value of money. On December 6, 1993, the Board published a proposal that would have factored into the APY calculation the specific time intervals for interest paid on the account—that is, the time value of money (58 FR 64190). It called for adding an additional APY formula. Based on the comments received and upon further analysis, the Board has withdrawn the proposed amendments. (See Docket R-0812 elsewhere in today's **Federal Register**.) Compounding and crediting issues.

In the context of deliberations about the APY proposal, the Board has considered two related issues regarding

depository institutions' compounding and crediting practices. This relationship between crediting and compounding has not previously been addressed in the regulation or in supplementary information. (The resolution of these issues, as discussed below, could provide an alternative basis for eliminating the anomaly produced by the current formula while requiring few changes to the current APY formula.)[1]

The act requires institutions to pay interest on the full amount of the principal in the account each day, and provides that this requirement shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting interest. Regulation DD states that the requirement to pay interest on the full amount of principal does not require institutions to compound or credit interest at any particular frequency. Neither the act nor the regulation defines "compounding," "crediting," or "principal."

One issue that has arisen is whether interest can be posted to a consumer's account and not be treated as part of the principal. Another is whether institutions that offer to credit interest to the consumer by check or transfer and permit interest to remain in the account must credit and compound interest on the same or a more frequent basis for those consumers that leave interest in the account. For example, if an institution offers a two-year certificate of deposit (CD) and permits consumers to receive accrued interest in monthly interest checks, does the institution that also permits interest to remain in the account have to credit and compound interest in the account on the same or more frequent basis (monthly or more often).

The Board recognizes that institutions may have read the act and regulation as permitting practices which compound and credit at different intervals. The Board is proposing to amend the regulation to clarify that interest cannot be credited to a consumer's account without becoming part of the principal. For example, assume a consumer earns $5 in interest on a $1,000 balance for the month of January. If an institution chooses to credit interest to the account monthly, then the institution must accrue interest on that sum. For example, if $5 is credited in January to an account with a balance of $1,000, the institution must accrue interest on $1,005 for the month of February. Simply put, if consumers are given access to earned interest in an account, the Board believes the act requires that consumers earn interest on those funds at that time.

The Board also proposes an amendment clarifying that although institutions may choose any compounding or crediting frequency for an account, institutions that provide for crediting interest either by check (or transfer of accrued interest to another account) or by posting interest to the account must do so on the same periodic basis. That is, if interest can be "credited" by check or transfer, an institution must credit interest to all such accounts at least as often a frequency. For example, an institution offering a one-year CD with the option to receive monthly or quarterly interest checks would have to credit interest to the account for compounding on at least a monthly frequency.

Of course, an institution need not permit consumers to receive interest payments by check or transfer. Similarly, the Board believes that if an institution requires consumers to receive interest solely by check (or transfer to another account), the institution need not also permit consumers to leave interest in the account for compounding.

The Board notes that this proposed interpretation could require a change in the compounding and crediting practices of some depository institutions, since institutions that do not currently compound on the same basis as they offer interest payments would have to change compounding frequencies or reduce payment options. The impact of the proposed amendments may be greater for those institutions offering consumers many options in crediting frequencies. For example, an institution permitting quarterly interest payments must also credit and compound at least quarterly for those consumers who choose to leave interest in the account. If an institution allows consumers to receive monthly interest checks (and can leave interest in the account), the institution could not offer this option without offering monthly crediting and compounding to other holders of the same account as well. The Board requests comment on these matters.

The Board also solicits comments on whether consumers who use APYs to comparison shop may be confused by an APY that reflects monthly compounding but pays less interest than if interest had compounded in the account. For example, assume two institutions offer a one-year CD with a 6.00% interest rate. One mandates monthly interest checks, the other permits monthly interest checks or monthly compounding. Both could advertise a 6.17% APY, even though a consumer depositing $1,000 receives $60 if interest checks are paid and $61.70 if money is left in the account.

(2) Proposed Regulatory Revisions: Section-by-Section Analysis

A section-by-section description of proposed amendments follows.

§ 230.2 Definitions.

Paragraph (c)—Annual Percentage Yield

The act and regulation define the APY as the total amount of interest that would be received based on the interest rate and the frequency of compounding for a 365-day year. The proposed amendment broadens the definition to treat crediting to the consumer's account—which includes the distribution of interest through interest checks or transfer—as the equivalent of compounding. For example, if an institution pays a 6.00% interest rate on an account, the same APY would result whether an institution compounds monthly or solely sends out monthly interest payments and does not permit interest to remain in the account.

The Board solicits comments on whether an exception should be made to the definition of APY, and whether the purpose of the regulation—enabling consumers to make informed decisions about deposit accounts—is better met if the APY captures the time value of interest received as an interest payment during the term of the account, as well as by compounding.

Paragraph (h)—Compounding

The act and regulation require institutions to disclose compounding policies for interest-bearing accounts. The Board proposes to define the term "compounding" as the frequency that earned interest is added to the principal in the consumer's account, on which interest then accrues. To illustrate, a CD offering monthly compounding adds interest to principal each month, and interest then accrues on the new month's principal—including the prior month's accrued interest.

Paragraph (j)—Crediting

The act and regulation also require institutions to disclose crediting policies for interest-bearing accounts. The Board proposes to define the term "crediting" to include the frequency that earned interest is paid to the account, or provided to the consumer by

[1] If an institution offers a multi-year noncompounding CD, the APY produced by the current formula is less than the interest rate, even if the institution pays out interest annually or more often.

check or transfer to another account. Thus, for example, an institution that sends a consumer a monthly check of accrued interest would be crediting interest monthly, even if interest were not permitted to remain in the account to earn additional interest.

§ 230.4 Account Disclosures.

Paragraph (b)(6)(iii)—Withdrawal of Interest Prior to Maturity

The regulation requires a disclosure for institutions offering time accounts that compound interest and permit a consumer to withdraw accrued interest during the account term. The disclosure states that the APY assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings. The Board requests comment on whether the disclosure would continue to be helpful to consumers in the current form if the proposed amendments are adopted.

§ 230.7 Payment of Interest.

Paragraph (b)—Compounding and Crediting Policies

The act requires institutions to pay interest on the full amount of the principal in the account each day, and provides that this requirement shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting interest. Regulation DD states that the requirement to pay interest on the full amount of principal does not require institutions to compound or credit interest at any particular frequency.

As discussed above, the Board believes institutions may choose any compounding or crediting frequency. However, once interest is credited to an account it becomes part of the principal, and if interest remains in the account, interest must be paid on those funds. The Board believes institutions may choose to offer accounts that credit interest solely by posting interest to the account, or by sending interest checks or transferring the interest to another account. But the Board also believes institutions offering accounts that provide consumers with the option to have interest credited by check (or transfer to another account) or by posting interest to the account provide at least as frequent a crediting frequency to all holders of the same account. That is, institutions must compound interest on funds remaining in the account at a frequency no less often than interest is offered to be credited—by check or transfer—to other consumers holding such accounts. For example, institutions may offer a one-year CD with monthly compounding and the option to receive monthly or quarterly interest checks, but they may not combine quarterly compounding with the option to receive monthly interest checks. The Board requests comment on the proposal.

Appendix A to Part 230—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

A. General Rules

The proposed amendments to Appendix A only affect institutions that credit interest solely by check or transfer to another account (and that do not permit the consumer to leave interest in the account). The Board proposes two amendments to Appendix A to address the calculation of the APY for these accounts. First, the Board proposes to delete footnote 3 as unnecessary. Second, the definition of "Interest" in the APY formula would be amended to provide that for such accounts, institutions would factor in the timing of interest payments as if interest were being compounded. For example, if an institution offers a two-year CD with a 6.00% interest rate and credits interest semi-annually to the consumer by check or transfer to another account, the "Interest" figure used in the APY formula would be $125.51 on a $1,000 deposit. This would be the dollar amount of interest earned for a two-year CD with a 6.00% interest rate that compounds semi-annually. The APY would be 6.09%.

Finally, the Board also provides guidance on two assumptions for calculating the APY that provide greater flexibility and ease compliance with the APY formula. First, institutions could calculate the APY by assuming an initial deposit amount of $1,000. Second, if interest is paid out monthly, quarterly, or semi-annually, institutions could base the number of days either on the actual number of days for those intervals or on an assumed number of days (30 days for monthly distributions, 91 days for quarterly distributions, and 182 days for semiannual distributions).

Appendix B—Model Clauses and Sample Forms

The Board solicits comments on model clauses or additional sample forms that may be appropriate if the amendments are adopted.

(4) Proposed Additional Guidance

The proposed regulatory amendments associated with a new APY formula raise other interpretive issues. The Board solicits comments on the issues addressed below:

1. *Comparing accounts that disclose the same APY but earn different dollar amounts of interest.* Under the proposal, consumers may receive the same APY disclosure but different dollar amounts of interest.[2] The Board solicits comment on whether consumers who are comparison shopping would be better served if the specific manner in which interest is credited (such as, "An annual percentage yield of 6.17% with monthly interest checks") should be stated along with the APY. (See §§ 230.3(e), 4(a)(ii), 4(b)(1)(i), 5(b), 8(b).)

2. *Compounding and crediting frequencies.* The regulation requires institutions to disclose the frequency with which interest is compounded and credited. This standard would require institutions also to specify the crediting frequency for interest payments sent directly to the consumer or to another account, whether by check or other means, as well as when interest is credited to the account. The Board solicits comment on the proposed disclosure and on whether stating the frequency of crediting by interest payments or transfers to other accounts is likely to help consumers compare and understand differences in account terms. (See § 230.4(b)(2).)

(5) Form of Comment Letters

Comment letters should refer to Docket No. R–0836, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 1/2 inch or 5 1/4 inch computer diskettes in any IBM-compatible DOS-based format.

(6) Regulatory Flexibility Analysis and Paperwork Reduction Act

The Board's Office of the Secretary has prepared an economic impact statement on the proposed revisions to Regulation DD. The analysis expresses concern about the desirability of

[2] For example, assume a one-year CD that pays an interest rate of 6.00%. Consumers would receive an APY of 6.17% if the institution requires monthly interest payments. Or, if the institution permits interest to be withdrawn monthly instead, the proposed amendments would also require institutions to permit interest to remain in the account for monthly compounding. Consumers holding this account would also receive an APY of 6.17% whether the consumer chooses to take monthly interest checks or to have interest remain in the account. However, based on a $1,000 deposit consumers who receive interest checks will earn $60.00, while those who compound interest will earn $61.70.

amending the regulation regarding the linkage of compounding and crediting frequencies at this time. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3245.

The Board solicits information regarding the likely costs for complying with the proposed changes to the regulation. In particular, the Board solicits comments on the following:

- What proportion of existing accounts would be affected by the proposed new rule requiring institutions to offer compounding on the same frequency as they permit interest payouts?
- What changes would institutions have to make to implement the proposed new compounding and crediting rule, and what would it cost institutions to make these changes?
- What changes in the number of different account terms and types of accounts offered would result if the proposal were adopted? For example, would institutions reduce the number of products offered? What effect would the amendments have on "private banking" relationships? Would institutions change from compounding to distributing the interest paid on accounts without compounding?

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the proposed revisions will be reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after consideration of comments received during the public comment period.

List of Subjects in 12 CFR Part 230

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

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 230 as follows:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 would continue to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Part 230.2 would be amended by revising paragraph (c), by redesignating paragraph (h) and paragraphs (i) through (v) as paragraph (i) and paragraphs (k) through (w), respectively, and by adding new paragraphs (h) and (j) to read as follows:

§ 230.2 Definitions.

* * * * *

(c) *Annual percentage yield* means a percentage rate reflecting the total amount of interest paid on an account, based on the interest rate and the frequency of ➧crediting or➧ compounding, for a 365-day period and calculated according to the rules in Appendix A of this part.

* * * * *

➧(h) *Compounding* means the frequency that earned interest is added to the principal in the account on which interest then accrues.➧

* * * * *

➧(j) *Crediting* means the frequency that earned interest is paid to the account, or provided to the consumer by check or transfer to another account.➧

* * * * *

3. Section 230.7 would be amended by redesignating paragraph (b) as paragraph (b)(1) and by adding a new paragraph (b)(2) to read as follows:

§ 230.7 Payment of interest.

* * * * *

(b) * * *

➧(2) *Equivalent compounding and crediting frequencies.* Institutions offering accounts that permit consumers to receive interest by check or transfer to another account and that permit consumers to leave interest in the account, must compound interest on funds left in the account at a frequency no less often than interest is offered to be credited to any consumer holding such an account.➧

* * * * *

4. Appendix A of part 230 would be amended by revising the first sentence in the introductory paragraph, the introductory text to Part I, and amending paragraph A, and by removing footnote 3 in Part I of Appendix A to read as follows:

Appendix A to Part 230—Annual Percentage Yield Calculation

The annual percentage yield measures the total amount of interest [paid] ➧earned➧ on an account based on the interest rate, and the frequency of compounding[,] ➧or crediting➧.[1] * * *

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

In general, the annual percentage yield for account disclosures under §§ 230.4 and 230.5 of this part and for advertising under § 230.8 of this part is an annualized rate that reflects the relationship between the amount of interest that would be earned by the consumer for the term of the account ➧(and taking into account the frequency of crediting)➧ and the amount of principal used to calculate that interest. Special rules apply to accounts with tiered and stepped interest rates.

A. General Rules

* * * In determining the total interest figure to be used in the formula, institutions shall assume that all principal and interest remain on deposit for the entire term and that no other transactions (deposits *or* withdrawals) occur during the term.[3] * * *

The annual percentage yield is calculated by use of the following general formula ("APY" is used for convenience in the formulas):

$$APY=100\ [(1+(\text{Interest}/\text{Principal}))^{(365/\text{Days in term})}-1]$$

"Principal" is the amount of funds assumed to have been deposited at the beginning of the account.

"Interest" is the total dollar amount of interest earned on the Principal for the term of the account ➧in which credited interest remains in the account. If interest is required to be credited solely by check or transfer, the total dollar amount of interest earned on the Principal for the term of the account is the amount of interest that would result if it were compounded at the same frequency interest is credited.➧

"Days in term" is the actual number of days in the term of the account.

* * * * *

Examples:

* * * * *

➧(3) If an institution offers a $1,000 two-year certificate of deposit that credits interest semi-annually solely by check or transfer, and there is no compounding at a 6.00% interest rate, using the general formula above, the annual percentage yield is 6.09%:

$$APY=100\ [(1+(125.51/1{,}000))^{(365/730)}-1]$$

$$APY=6.09\%$$➧

* * * * *

[1] The annual percentage yield reflects only interest and does not include the value of any bonus (or other consideration worth $10 or less) that may be provided to the consumer to open, maintain, increase or renew an account. Interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future.

[3] [This assumption shall not be used if an institution requires, as a condition of the account, that consumers withdraw interest during the term. In such a case, the interest (and annual percentage yield calculation) shall reflect that requirement.]

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

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–11154 Filed 5–10–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–41–AD]

Airworthiness Directives; British Aerospace Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP airplanes. This proposal would require modification of the power supply for the communications system. This proposal is prompted by reports of loss of power to the communications system due to an electrical fault in the ground crew jack box or the handset of the public address (PA) system. The actions specified by the proposed AD are intended to prevent the inability of the flight crew to communicate with passengers via the PA system and with air traffic control due to loss of power to the communication system, which may lead to unsafe operation of the airplane.

DATES: Comments must be received by July 5, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–41–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–41–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–41–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP airplanes. The CAA advises that it has received reports of loss of power to both essential and emergency power supplies for the communications systems due to a ground fault in the communications jack box of the ground crew-to-flight crew communications system in the bay of the nose landing gear or the handset of the public address (PA) system. This condition, if not corrected, could result in the inability of the flight crew to communicate with passengers via the PA system and with air traffic control, which may lead to unsafe operation of the airplane.

Jetstream has issued Service Bulletin ATP–23–21–35288A, Revision 2, dated February 15, 1994, that describes procedures for modification of the power supply for the communications system. This modification (Modification 35288A) entails installing two diodes on the terminal block and the associated wiring to ensure that, in the event of an electrical fault in the jack box for the ground crew-to-flight crew communications system or the handset of the PA system, the communications circuits will continue to operate. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

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

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

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,500, or $1,650 per airplane.

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

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace: Docket 94-NM-41-AD.

Applicability: Model ATP airplanes having constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the flight crew to communicate with passengers via the public address system and with air traffic control due to loss of power to the communication system, which may lead to unsafe operation of the airplane, accomplish the following:

(a) Within 675 hours time-in-service after the effective date of this AD, modify the power supply of the communications system (Modification 35288A) in accordance with Jetstream Service Bulletin ATP-23-21-35288A, Revision 2, dated February 15, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

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

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 5, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-11352 Filed 5-10-94; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 94-NM-38-AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require replacement of the autopilot disconnect switches with modified units. This proposal is prompted by several incidents in which the flight crew did not depress both halves of the autopilot disconnect switch during the LAND 2 or LAND 3 approach and, as a result, one autopilot remained engaged. This condition resulted in unanticipated movements of the stabilizer trim and higher than anticipated control forces of the flight controls. The actions specified by the proposed AD are intended to prevent the flight crew from inadvertently disconnecting only one autopilot when both autopilots are engaged, which could result in unanticipated control surface movements.

DATES: Comments must be received by June 20, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-38-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-38-AD." The postcard will be date stamped and returned to the commenter

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No.

94–NM–38–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that operators have reported several incidents in which the flight crew did not depress both halves of the autopilot disconnect switch during the LAND 2 or LAND 3 approach and, as a result, one autopilot remained engaged. Although certain aural warnings sounded and visual indicators illuminated in these situations, the flight crew still believed that both autopilots had been disconnected. Consequently, unanticipated movements of the stabilizer trim and higher than anticipated control forces of the flight controls occurred. Inadvertent disconnection of only one autopilot when both autopilots are engaged could result in unanticipated control surface movements.

Fokker has issued Service Bulletin SBF100–22–020, dated September 25, 1990, that describes procedures for replacement of the autopilot disconnect switches with modified units. Installation of the modified units will ensure that if one-half of the autopilot disconnect switch is depressed, both autopilots will disengage; in addition, the system will remain separated. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive 90–112(A), dated October 15, 1990, in order to assure the continued airworthiness of these airplanes in the Netherlands.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the autopilot disconnect switches with modified units. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 19 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $55,860, or $2,940 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 94–NM–38–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11286 inclusive, 11289 through 11293 inclusive, 11295 through 11297 inclusive, 11300, 11303, 11306, 11308, 11310, 11312, and 11313; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the flight crew from inadvertently disconnecting only one autopilot when both autopilots are engaged, which could result in unanticipated control surface movements, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the autopilot disconnect switches with modified units, in accordance with Fokker Service Bulletin SBF100–22–020, dated September 25, 1990.

(b) As of 6 months after the effective date of this AD, no person shall install an autopilot disconnect switch, part number A47007–401 or A47007–403, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on May 5, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certificate Service.

[FR Doc. 94–11353 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–AWP–8]

Proposed Establishment of Class D and Class E Airspace; Bullhead City, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class D and Class E airspace at Bullhead City, AZ. An airport control tower has been commissioned at Laughlin/Bullhead Municipal Airport. This proposal would provide adequate Class D airspace for instrument flight rules (IFR) operations and require two-way communications at Laughlin/Bullhead Municipal Airport, and would establish Class E airspace for instrument approach procedures in areas outside the Class D surface area.

DATES: Comments must be received on or before June 15, 1994.

ADDRESSES: Send comments on proposal in triplicate to Manager, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, Docket No. 94–AWP–8, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Western-Pacific Region at the same address. An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297-0697.

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 the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AWP–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, 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, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace with Class E arrival extensions at Bullhead City, AZ. An airport traffic control tower was commissioned at Laughlin/Bullhead Municipal Airport. This proposal would provide adequate Class D and E airspace for IFR operations and require two-way radio communications at Laughlin/Bullhead Municipal Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 and Class E airspace areas designated as extensions to Class D surface areas are published in Paragraph 6004 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 and Class E airspace designations listed in this document would be published subsequently in this 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 10034; 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 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.

§71.7 [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

* * * * *

AWP CA D Bullhead City, AZ [New]

Laughlin/Bullhead Municipal Airport, AZ
(lat. 35°08′50″ N., long. 114°33′32″ W.)

* * * * *

That airspace extending upward from the surface to and including 2,500 feet AGL within a 4.2 mile radius of the Laughlin/Bullhead Municipal Airport; excluding that airspace west of a line 1.8 miles west of and parallel to the north-south runway. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace as Designated as an Extension to a Class D Surface Area

* * * * *

AWP CA E4 Bullhead City, AZ [New]

(lat. 35°08'50" N., long. 114°33'32" W.)

That airspace extending upward from the surface bounded by a line beginning at lat. 34°57'00" N., long. 114°33'00" W.; to lat. 35°28'00" N., long. 114°39'00" W.; to lat. 35°29'00" N., long. 114°20'28" W.; to lat. 34°57'30" N., long. 114°26'30" W.; to the point of beginning.

This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on April 22, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94-11407 Filed 5-10-94; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Proposed Rule; Requirements for Child-Resistant Packaging; Mouthwash Packages Containing 3 Grams or More of Ethanol

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: Under the Poison Prevention Packaging Act of 1970, the Commission is proposing a rule to require child-resistant packaging for mouthwashes with 3 grams or more of absolute ethanol per package. The Commission has preliminarily determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting mouthwash.

DATES: Comments on the proposal should be submitted no later than July 25, 1994.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East-West Highway, Bethesda, Maryland 20814-4408, telephone (301)504-0800.

FOR FURTHER INFORMATION CONTACT: Jacqueline Ferrante, Ph.D., Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504-0477 ext. 1199.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutes and Regulations

The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471-1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.)

Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating the effectiveness (16 CFR 1700.20). Regulations have been issued requiring special packaging for a number of household products (16 CFR 1700.14). The findings that the Commission must make in order to issue a standard requiring child-resistant ("CR") packaging for a product are discussed below in Section D of this notice. For the purposes of the PPPA, the amount of a substance "in a single package" that triggers the requirement to place the product in CR packaging refers to the total amount in a single retail unit of the substance.

The PPPA allows the Commission to require CR packaging for household substances, which include foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). Mouthwashes are either drugs, if they make medical claims, or cosmetics.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if (1) the manufacturer (or packer) also supplies the substance in CR packages and (2) the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: "Package not child-resistant." 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the "single-size exemption."

The Commission may restrict the right to market a single size in noncomplying packaging if the Commission finds that the substance is not also being supplied in popular size packages that comply with the standard. 15 U.S.C. 1473(c). In this case, the Commission may, after giving the manufacturer or packer an opportunity to comply with the purposes of the PPPA and an opportunity for a hearing, order that the substance be packaged exclusively in CR packaging. To issue such an order, the Commission must find that the exclusive use of special packaging is necessary to accomplish the purposes of the PPPA.

2. The Mouthwash Petition

On March 2, 1993, the Commission was petitioned to require child resistant packaging for mouthwashes containing more than 5 percent ethanol. The term "mouthwash" includes liquid products that are variously called mouthwashes, mouthrinses, antiseptics, gargles, fluoride rinses, anti-plaque rinses, and breath fresheners. It does not include throat sprays or aerosol breath fresheners. The petition was submitted by the American Academy of Pediatrics, the American Association of Poison Control Centers, the Center for Science in the Public Interest, and 28 states, Guam, and the Northern Mariana Islands.

The petitioners stated several reasons for their request: (1) Many mouthwashes contain high percentages of ethanol, an extremely toxic substance, in a package large enough to cause children serious injury or death; (2) these mouthwashes are accessible to children because they are generally considered innocuous and do not have CR packages; (3) they are attractive to children because of their appealing taste, color, and smell; and (4) data show that children have been seriously injured or died from accidental ingestion of ethanol-containing mouthwashes.

On November 17, 1993, the Commission granted the petition. Although the Nonprescription Drug Manufacturers Association ("NDMA") and the Cosmetic, Toiletry, and

Fragrance Association ("CTFA") had announced plans to implement a voluntary program to place mouthwashes with more than 5 percent ethanol in CR containers, the Commission found that mandatory action still may be necessary. In April 1994, the NDMA and CTFA notified the Commission that the products subject to their voluntary program had been changed from mouthwashes with more than 5 percent ethanol to mouthwashes with 3 grams or more in a single container.

B. Toxicity

The Commission's toxicity review indicates that mouthwashes with ethanol can present a serious ingestion hazard to children. Most of the popular adult mouthwashes contain between 14 percent and 27 percent ethanol. By comparison, beer contains between 5 percent and 7 percent ethanol and wine contains 12 to 14 percent ethanol.

Ethanol depresses the central nervous system. Symptoms of acute ethanol poisoning in children include irritability, lethargy, and unconsciousness which can lead to coma and death at high doses. Lethal blood levels of ethanol in children are reported to range between 250 and 500 mg/dl, and the lethal dose of ethanol is 3 g/kg. Deaths or serious injury could occur at lower doses due to other ethanol-induced effects. Ethanol poisoning in children can produce certain metabolic complications such as hypoglycemia, metabolic acidosis, and hypokalemia.

A review of the relevant literature shows that three deaths of children under 5 years of age have been reported. The most recent death reported occurred in 1992 and involved a 3-year-old girl who ingested an unknown amount of mouthwash that contained 18 percent ethanol. Several other cases of ethanol-induced hypoglycemia or toxicity following mouthwash ingestion are reported in the literature.

The National Electronic Injury Surveillance System ("NEISS") reported 36 cases of ethanol-containing mouthwash from January 1987 through November 1993. Based on these ingestions, it was estimated that a total of 1,670 mouthwash poisoning cases were treated in hospital emergency rooms in the United States during that time. An estimated 81 percent of these children were 1 or 2 years old, and about 5 percent of the children were hospitalized.

In addition to these sources, the American Association of Poison Control Centers' National Data Collection System ("AAPCC") includes cases reported by participating poison control centers. The AAPCC received 10,193 reports of ingestions of ethanol-containing mouthwash by children under 6 years of age during the 5-year period from 1987 through 1991. The AAPCC reported 1,847 ingestions of mouthwash with ethanol by children under 5 years old in 1991. Of these ingestions, 181 resulted in minor or moderate outcomes (symptoms were not life-threatening) and 1 resulted in a major, or life-threatening, outcome. Most cases reported to poison control centers are managed in a non-health-care facility, usually the patient's home.

C. Proposed Regulation

The mouthwash petition requested that the Commission require CR packaging for mouthwash that contains more than 5 percent ethanol. The Commission decided to propose that mouthwash products with 3 grams (g) or more of absolute ethanol per package or retail-sale unit should be subject to the regulation. This level is obtained by dividing the lethal dose of ethanol (3 g/kg of body weight) for a 10-kg child (30 g) by a safety factor of 10. This safety factor is needed because less than the "lethal" dose can produce serious toxic effects, or even death from hypoglycemia or other secondary effects. Three grams of absolute ethanol are present in approximately 2.6 ounces of mouthwash with 5 percent ethanol.

Regulating at the level requested by the petitioners (more than 5 percent ethanol) may not sufficiently protect children. This is because relatively small amounts of mouthwash at a level of 5 percent or somewhat below would exceed the 3 g limit that the Commission has preliminarily determined is needed to protect children.

D. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning children's ingestion of ethanol-containing mouthwash demonstrate that the amount of ethanol in available mouthwash preparations is sufficient to cause serious illness and injury to children. These mouthwash preparations are readily available to children. Even if the manufacturers of these mouthwashes that are members of the NDMA and CFTA will voluntarily use CR packaging for their products, the Commission concludes that a regulation is needed to ensure that products subject to the regulation will be placed in CR packaging by all mouthwash packagers. In addition, the regulation will enable the Commission to enforce the CR packaging requirement and ensure that effective CR packaging is used.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds preliminarily that the degree and nature of the hazard to children from ingesting ethanol-containing mouthwashes is such that special packaging is required to protect children from serious illness. The Commission bases this preliminary finding on the toxic nature of such mouthwashes, described above, and the accessibility of such preparations to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate." Technical feasibility exists when technology exists or readily can be developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Appropriateness exists when packaging complying with the standards will adequately protect the integrity of the substance and not interfere with the intended storage or use.

CR packages are mass produced for products that contain ethanol and have similar properties to mouthwashes. Two industry groups have indicated that their members can have CR packages for one size of their mouthwashes by August 31, 1994, with their entire lines converted by May 1, 1995. In addition, one major manufacturer of mouthwash has introduced a popular size of its product in packaging that is not only child resistant, but is easier for adult consumers (and especially older adults) to open. Therefore, the Commission preliminarily concludes that CR packaging for mouthwashes is technically feasible, practicable, and appropriate.

3. Other Considerations

In establishing a special packaging standard, section 3(b) of the PPPA, 15 U.S.C. 1472(b), requires the Commission to consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

These items have been considered with respect to the various determinations made in this notice.

E. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

Because of their voluntary program, members of the NDMA and the CFTA are already implementing assembly line and mass production techniques to package ethanol-containing mouthwashes with CR packages. These groups have indicated that their program will be fully implemented by May 1, 1995, and will involve at least 95 percent of the industry's sales. Furthermore, these groups have indicated that each of their members will have at least one size of product in CR packaging by August 31, 1994. Thus, it appears that the manufacturers will be phasing in CR packaging over various product sizes.

Therefore, it appears that as the end of the industry's phase-in period approaches, there will be a relatively small portion of production that would not be in CR packaging. At least one major manufacturer has already started using CR packaging on what reportedly is a major portion of its production. The Commission concludes that even the few packagers of mouthwash products containing 3 grams or more of ethanol that are not participating in the voluntary program should be able to implement CR packaging for their products by 6 months after the issuance of a final rule, or by May 1, 1995, whichever is sooner, without serious adverse economic effects. Any packagers that did not have their assembly lines for CR packaging fully operational by that time could obtain appropriate packaging on an interim basis from contract packers.

Accordingly, the final rule is proposed to become effective 180 days after issuance of a final rule, or May 1, 1995, whichever is sooner, as to all products subject to the rule that are packaged on or after that date. It is possible, therefore, that the effective date will be less than 180 days after issuance of the final rule. The Commission finds that there is good cause for preliminarily determining that an effective date of less than 180 days is in the public interest. This determination is based on (1) the desirability of having CR packaging for this product on the market as soon as practicable in order to reduce the risk of ethanol poisonings to children from a widely distributed product and (2) the fact that, under the industry's voluntary program, at least 95 percent of the industry will be in compliance by May 1, 1995.

F. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics has prepared a preliminary economic assessment of a rule to require special packaging for mouthwash preparations with 3 g or more of ethanol in a single package. Based on this assessment, the Commission concludes that such a requirement would not have a significant impact on a substantial number of small businesses or other small entities because of the widespread acceptance of the voluntary CR packaging program. CR packaging for mouthwash preparations is readily available at an incremental cost of one-half to two cents per closure, and the PPPA permits manufacturers to market preparations in one non-CR size. The relatively low costs of CR packages should not be a burden to current small business manufacturers or an entry burden for future marketers. Manufacturers would be given enough time to use up existing supplies of non-CR packages and to obtain suitable CR packaging and incorporate its use into their packaging lines.

Accordingly, for the reasons given above, the Commission preliminarily concludes that the rule to require special packaging for mouthwashes containing 3 g or more of ethanol would not have any significant economic effect on a substantial number of small entities.

G. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed Poison Prevention Packaging Act (PPPA) packaging requirements for ethanol-containing products.

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Preliminary analysis of the potential impact of this proposed rule indicates that CR packages for certain mouthwash preparations would have no significant effects on the environment. This is because the rule will not significantly increase the number of CR packages in use and, in any event, the manufacture, use, and potential disposal of the CR packages present the same potential environmental effects as do the currently used packages.

Therefore, because the proposed rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraph (a)(22) and republishing the introductory text of paragraph (a) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children

from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(22) *Mouthwash.* Mouthwash preparations for human use and containing 3 g or more of ethanol in a single package (*i.e.*, retail unit) shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c).

Dated: May 5, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(**Note.** This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Briefing Memorandum with attached briefing package, September 30, 1993.
2. Memorandum from Jacqueline Ferrante, Ph.D., HSPS, to James F. Hoebel, Acting Associate Executive Director for Health Sciences, "Recommendation for the level of regulation of mouthwash with ethanol", January 10, 1994.
3. Memorandum from Terry Kissinger, Ph.D., EPHA, to Jacqueline Ferrante, Ph.D., HSPS, "Injury Data Related to the Toxicity of Ethanol-containing Mouthwash", January 31, 1994.
4. Memorandum from Marcia P. Robins, ECSS, to Jacqueline Ferrante, Ph.D., HSPS, "Preliminary Assessment of Economic and Environmental Effects of a Proposal to Require CR Packaging for Mouthwash Containing Ethanol", February 24, 1994.
5. Memorandum from Charles Wilbur, HSPS, to Jacqueline Ferrante, Ph.D., HSPS, "Technical Feasibility, Practicability, and Appropriateness Determination for the Proposal to Require CR Packaging for Mouthwash Preparations Containing Ethanol", February 24, 1994.
6. Memorandum from Marcia P. Robins, ECSS, to Ronald L. Medford, EXHR, "Economic Effects of an Earlier Effective Date for CR Packaging of Mouthwash Preparations Containing Ethanol," April 6, 1994.
7. Briefing memorandum from Jacqueline N. Ferrante, Ph.D., HSPS, to the Commission, "Proposed Special Packaging Standard for Mouthwash Products with Ethanol," with Tabs A–E, April 11, 1994.
8. NDMA/CTFA Joint Voluntary Program on Child Resistant Packaging for Alcohol Containing Mouthwashes (Revised).
9. Memorandum from Jacqueline Ferrante, Ph.D., HSPS, to the Commission, "Revised industry voluntary program for child-resistant packaging of mouthwashes with ethanol," April 20, 1994.
10. Memorandum from Harleigh Ewell, GCRA, to the Commission, transmitting a revised **Federal Register** notice, April 20, 1994.

[FR Doc. 94–11306 Filed 5–10–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–775]

RIN No. 1218–AA65

Safety Standards for Steel Erection

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

ACTION: Notice of establishment of Negotiated Rulemaking Committee.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing its decision to establish a Steel Erection Negotiated Rulemaking Advisory Committee under the Negotiated Rulemaking Act (NRA) and the Federal Advisory Committee Act (FACA).

DATES: The Charter will be filed on May 27, 1994.

ADDRESSES: Any written comments in response to this notice should be sent, in quadruplicate, to the following address: Docket Office, Docket S–775, room N–2625, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Information and Consumer Affairs, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (Title 5 U.S.C. App. I), section 3 of the Negotiated Rulemaking Act of 1990, Title 5 U.S.C. 561 *et seq.* and after consultation with the General Services Administration (GSA), the Secretary of Labor has determined that the establishment of the Steel Erection Negotiated Rulemaking Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by the Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*).

The Committee will function as an integral part of the Department's rulemaking on revising safety standards for steel erection. It will attempt, via face-to-face negotiations, to reach consensus on the coverage and the substance of these rules, which can be used as the basis of a Notice of Proposed Rulemaking. The Committee is responsible for identifying the key issues, gauging their importance, analyzing the information necessary to resolve the issues, arriving at a consensus, and submitting to the Secretary of Labor the proposed regulatory text and supporting rationale and documentation for an occupational safety standard governing worker safety during steel erection.

Meetings shall be held, as necessary, at the discretion of the Chairperson, however, no fewer than six meetings shall be held. The Committee will terminate two years from the date of this Charter or until the promulgation of the final standard, whichever is later.

The Committee is composed of no more than 25 members including a facilitator, appointed by the Secretary of Labor, unless the Secretary of Labor determines that a greater number of members is necessary for the functioning of the Committee or to achieve balanced membership. Members may represent the following interests in appropriate balance: Architectural, design, and engineering firms; developers, property owners and general contractors; erection contractors using steel; fabricators of structural steel products; insurance organizations and public interest groups; labor organizations representing employees who perform erection work; manufacturers and suppliers of fall protection safety equipment; manufacturers and suppliers of structural members and pre-engineered components; and government entities.

The Committee will report to the Assistant Secretary for Occupational Safety and Health. It will function solely as an advisory body and in compliance with the provisions of the FACA and the NRA. Its Charter will be filed under the FACA fifteen (15) days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the Steel Erection Negotiated Rulemaking Advisory Committee. Any written comments in response to this notice should be sent, in quadruplicate, to the following address: Docket Office, Docket S–775, room N–2625, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 219–7894.

Signed at Washington, DC, this 5th day of May 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–11391 Filed 5–10–94; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. R-153]

RIN 2133-AB13

Cargo Preference—U.S.-Flag Vessels; Available U.S.-Flag Commercial Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed amendment to the cargo preference regulations of the Maritime Administration (MARAD) states that the requirement for the carriage of preference cargoes on privately-owned "available" U.S.-flag commercial vessels would be satisfied, during a one-season trial period, by U.S.-flag commercial vessels calling at a Canadian transshipment terminal outside the St. Lawrence Seaway, to load bulk agricultural commodity cargoes subject to the cargo preference laws that are transshipped from U.S. ports on the Great Lakes by U.S.-flag or foreign-flag vessels; and determinations of "fair and reasonable rates for United States commercial vessels" would include through bills of lading for such available U.S.-flag commercial vessels. This amendment would allow Great Lakes ports to compete for agricultural commodity preference cargoes.

DATES: Comments on the one-season trial period for this rule must be received on or before May 31, 1994, while comments on a permanent rule or a rule of greater duration than the one-season trial period must be received July 11, 1994.

ADDRESSES: Send an original and two copies of comments to the Secretary, Maritime Administration, room 7300, 400 7th St., SW., Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: John E. Graykowski, Deputy Maritime Administrator for Inland Waterways and Great Lakes, Maritime Administration, Washington, DC, 20590, Telephone (202) 366-1718.

SUPPLEMENTARY INFORMATION: United States law requires that at least 50 percent of cargo "impelled" by Federal programs (preference cargoes), and transported by sea, be carried on privately-owned United States-flag commercial vessels, to the extent that such vessels are available at fair and reasonable rates. See sections 901(b) (the "Cargo Preference Act") and 901b, Merchant Marine Act, 1936, as amended ("the Act"), 46 App. U.S.C. 1241(b) and 1241f. The Secretary of Transportation is desirous of administering that program so that all ports and port ranges may participate. As discussed below, to achieve these objectives, MARAD is proposing to amend its cargo preference regulations to allow Great Lakes ports to compete for agricultural commodity preference cargoes for a one-season trial period, corresponding to the Great Lakes shipping season when the St. Lawrence Seaway system is in use.

For a number of reasons, United States-flag commercial vessels in foreign commerce do not serve the Great Lakes. Consequently, cargoes subject to cargo preference are not loaded at Great Lakes ports, resulting in significantly less cargo for these ports in comparison with ports on other United States coasts. MARAD proposes to permit cargoes to be counted toward the preference requirements if they are loaded at Great Lakes ports for the trip along the St. Lawrence Seaway and then transferred to United States-flag vessels for the ocean portion of their carriage. The registry ("flag") of the vessel loading the cargo on the Great Lakes and carrying it through the Seaway would not be relevant. This rule would be in effect during a trial period corresponding to the current Great Lakes shipping season.

MARAD has issued a regulation governing compliance with cargo preference requirements by shipper agencies, which is published at 46 CFR 381.8. This proposed rule would add a new section 381.9 to MARAD's cargo preference regulations. It would state that: (1) For a one-season trial period, the requirement for "available" U.S.-flag commercial vessels under the Act would be satisfied by U.S.-flag commercial vessels calling at a Canadian transshipment terminal outside the St. Lawrence Seaway to carry bulk agricultural commodity cargoes subject to the cargo preference laws, transshipped from U.S. ports on the Great Lakes by U.S.-flag or foreign-flag vessels; and (2) determinations of "fair and reasonable rates for United States commercial vessels" under section 901(b) would include through bills of lading for such available U.S.-flag vessels. Such combination foreign/U.S.-flag voyages would not be allowed if, in the future, all-U.S.-flag carriage, at fair and reasonable rates for U.S.-flag commercial vessel service, becomes available to load bulk agricultural commodities at U.S. Great Lakes ports.

Based on experience during the trial period, and after reviewing comments on this rulemaking, MARAD will consider whether to make this rule permanent, or extend it for a period of time longer than the one-season trial period.

The need for this rulemaking arises due to changing shipping conditions affecting U.S.-flag vessels operating in the Great Lakes, resulting in the absence of all-U.S.-flag vessel availability for the carriage of cargo between U.S. Great Lakes ports and foreign countries.

We do not believe that this proposal is precluded by any rulings of the Comptroller General. Specifically, in 1960, the Comptroller General examined a practice involving shipment of preference cargoes from U.S. Great Lakes ports to Canadian St. Lawrence River ports on foreign-flag vessels for "topping off" U.S.-flag ocean-going vessels which had partially loaded at U.S. Great Lakes ports. No. B-140872, 39 Comp. Gen. 758 (1960). The Comptroller General's opinion found no basis to criticize a regulation of the Department of Agriculture holding that 50 percent of the cargo [1] moving between the U.S. Great Lakes ports and Canadian St. Lawrence River ports must move on U.S.-flag vessels. It should be noted that at that time there was some all-U.S.-flag service to U.S. Great Lakes ports.

Dramatic changes in shipping conditions have occurred since 1960, including the disappearance of any all-U.S.-flag commercial ocean-going service to foreign countries from U.S. Great Lakes ports. The static configuration of the St. Lawrence Seaway system and the evolving greater size of commercial vessels is one significant shipping change. In 1960, the average U.S.-flag general cargo vessel had a deadweight tonnage of 10,976; while in 1993, the average U.S.-flag general cargo vessel had a deadweight tonnage of 17,464.[2] In addition, the average size of U.S.-flag vessels used for the carriage of bulk agricultural product cargoes has increased greatly during the past ten years.

The following table shows the total amounts of bulk agricultural product preference cargo moving out of the Great Lakes, and the amounts moving on U.S.-flag vessels out of the Great Lakes, during the years 1986-1993.

[1] The Comptroller General's 1960 decision predated the 75 percent requirement instituted by the Food Security Act of 1985.

[2] Source: Maritime Administration, Office of Trade Analysis and insurance.

USDA EXPORT PROGRAM CARGOES EMANATING FROM THE GREAT LAKES SUBJECT TO CARGO PREFERENCE

[In metric tons]

Calendar year	American	Foreign	Total	Percent U.S.
1986	10,518	225,708	236,226	4.5
1987	6,989	251,252	258,246	2.7
1988	97,581	124,360	221,941	44.0
1989	119,271	79,766	199,037	59.9
1990				
1991		26,405	26,405	
1992		14,505	14,505	
1993	36,000	10,004	46,004	73.3

Source: Department of Agriculture, Kansas City Commodity Office, Export Operations Division.

For the period 1986 through 1993, total USDA controlled agricultural export tonnage from the Great Lakes was 1,002,364 metric tons. The total tonnage carried by U.S.-flag vessels was 270,359 metric tons, or 27 percent. However, little preference cargo has moved on U.S.-flag vessels out of the Great Lakes since 1989, with the exception of the MORMACSKY trial in 1993, discussed below. At present, the Great Lakes simply do not have any all-U.S.-flag ocean freight capability for carriage of bulk preference cargo. In contrast, the total non-liner export nationwide of USDA and AID agricultural assistance program cargo subject to cargo preference in the 1992–3 cargo preference year (the latest program year for which figures are available) amounted to 6,297,015 metric tons, of which 4,923,244 mt. or 78.2 percent was transported on U.S.-flag vessels. (Source: Maritime Administration data base.)

The disappearance of government-impelled cargo flowing from the Great Lakes coincides with the expiration of the Great Lakes "set aside." Under the Food Security Act of 1985, Public Law 99–198, codified at 46 App. U.S.C. 1241f(c)(2), a certain minimum amount of government-impelled cargo was required to be allocated to Great Lakes ports during calendar years 1986, 1987, 1988 and 1989. That "set-aside" expired in 1989, and was not renewed by the Congress.

The 1993 results reflect a unique movement out of the Great Lakes involving a U.S.-flag mother ship and two U.S.-flag feeder vessels. Two U.S.-flag lake bulk carriers, the J. L. MAUTHE and the AMERICAN MARINER, served as feeders bringing wheat from a U.S. Great Lakes port to a Canadian transshipment point where the MORMACSKY, a U.S.-flag ocean going vessel, loaded the cargo destined to Russia. All the vessels were under the control of U.S.-flag carriers. Reportedly, the demonstration was possible as a result of commodity prices in the Midwest which favored the Great Lakes over other U.S. ports. However, the MORMACSKY experiment has not been duplicated. The high cost of U.S.-flag feeder carriage involved in such transshipment would normally allow future transshipment only if foreign-flag vessels brought the cargo to the Canadian transshipment point and resulted in the lowest landed cost.

This rule would not establish a preference or set aside for the Great Lakes. Availability of U.S.-flag service would continue to be determined on a national basis. The amount of cargo reserved for U.S.-flag vessels overall would not decrease because the cargo to be moved on foreign-flag feeder vessels to Canadian transshipment points would not be "subtracted out" from the 75 percent of cargoes reserved for U.S.-flag carriage.

This proposed rule recognizes the operational limitations of the St. Lawrence Seaway and makes it possible for U.S. ports situated on the Great Lakes to compete with ports located on the other coastal ranges of the United States for the shipment of bulk agricultural product cargoes. It would not guarantee that cargoes will move through Great Lakes ports, but would only allow the Great Lakes ports an opportunity to compete for such cargoes. Movements out of the Great Lakes would still be required to be cost competitive with U.S.-flag service from the other coastal ranges in order to attract cargoes.

This proposed rule would not interfere with the concept of "lowest landed cost" contained in the regulations of the Commodity Credit Corporation (CCC), a unit of the Department of Agriculture responsible for obtaining agricultural products for shipment under various foreign aid programs. The CCC regulations, at 7 CFR 1496.5, provide that the lowest combined total cost of the commodity, plus transportation charges to the port of destination calculated on the basis of U.S.-flag rates and availability, will prevail with regard to awarding contracts. The proposed combined transportation originating at Great Lakes ports would compete on the basis of lowest landed cost with U.S.-flag vessel availability from the other port ranges.

As for determining a "fair and reasonable" rate for this mixed carriage, the U.S.-flag component would be considered under the existing regulations at 46 CFR part 382 or part 383, as appropriate, with the cost for the foreign-flag component incorporated into the U.S.-flag component in the same way as the cost of foreign-flag vessels used in lightening operations in the recipient country's territorial waters.

Rulemaking Analyses and Notices

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that 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. Since this rule would affect other Federal agencies, is of great interest to the maritime industry, and has been determined to be a significant rule under the Department's Regulatory Policies and Procedures, it is considered to be a significant regulatory action under E.O. 12866. The abbreviated time for comment on the one-season trial period is necessitated by the opening of the St. Lawrence Seaway System on April 5, 1994.

MARAD projects that this rule would allow the movement of up to 250,000 to

300,000 metric tons of agricultural commodities from Great Lakes ports, with a reduction in the shipping cost to the sponsoring Federal agencies of up to $2 to $3 per metric ton ($500,000 to $900,000).

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

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 381.

Freight, Maritime carriers.

Accordingly, MARAD proposes to amend 46 CFR part 381 as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 would be revised to read as follows:

Authority: 46 App. U.S.C. 1114(b), 1122(d), and 1241; 49 CFR 1.66.

2. A new § 381.9 would be added to read as follows:

§ 381.9 Available U.S.-flag service for 1994.

For purposes of shipping bulk agricultural commodities from U.S. Great Lakes ports during the 1994 shipping season, if direct U.S.-flag service, at fair and reasonable rates, is not available at U.S. ports in the Great Lakes, a joint service involving a foreign-flag vessel(s) carrying cargo no farther than a Canadian port(s) on the Gulf of St. Lawrence, with transshipment via a U.S.-flag privately owned commercial vessel to the ultimate destination, will be deemed to comply with the requirement of "available" commercial U.S.-flag service under the Cargo Preference Act of 1954. Shipper agencies considering bids resulting in the lowest landed cost of transportation based on U.S.-flag rates and service shall include within the comparison of U.S.-flag rates and service, for shipments originating in U.S. Great Lakes ports, through rates incorporating a foreign-flag leg from U.S. Great Lakes ports to a Canadian port on the Gulf of St. Lawrence and a U.S.-flag leg for the remainder of the voyage. The "fair and reasonable" rate for this mixed service will be determined by considering the U.S.-flag component under the existing regulations at 46 CFR part 382 or 383, as appropriate, and incorporating the cost for the foreign-flag component into the U.S.-flag "fair and reasonable" rate in the same way as the cost of foreign-flag vessels used to lighten U.S.-flag vessels in the recipient country's territorial waters.

Dated: May 4, 1994.

By order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 94–11133 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–81–P

Notices

Federal Register
Vol. 59, No. 90
Wednesday, May 11, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Prichard Project Area, Idaho Panhandle National Forests, Shoshone County, ID

ACTION: Notice of Availability of the Final Environmental Impact Statement and Record of Decision for proposed activities in the Prichard Project Area.

DATES: The appeal period on this decision ends June 20, 1994.

ADDRESSES: Appeals should be addressed to Appeals Deciding Officer, Regional Forester, David F. Jolly, USDA Forest Service, Northern Region, 200 East Broadway, P.O. Box 7669, Missoula, MT 59867.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action, environmental impact statement and the Record of Decision should be directed to Don Garringer, Planning Staff Officer, Wallace Ranger District, Idaho Panhandle National Forests, P.O. Box 14, Silverton, ID 83867. Phone: (208) 752–1221.

SUMMARY: Notice is hereby given that the Forest Service has prepared a Final Environmental Impact Statement (FEIS) and signed a Record of Decision documenting a landscape-level approach to ecosystem management in the Prichard Project Area. The area is located approximately 12 air miles northeast of Wallace, Idaho, and is approximately 29,700 acres in size.

Public participation has been on going throughout the project. Comments received during the comment period have been addressed by appropriate specialists in an appendix located in the FEIS. During the 45 day appeal period comments and concerns should still be addressed to the planning officer for clarification.

The District Ranger is the responsible official for this EIS, and has made the decision to implement alternative 7, a modification of the preferred alternative in the DEIS. Rationale for this decision can be found in the Record of Decision. His decision was based upon several factors: Comments and responses from the public, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies.

SUPPLEMENTARY INFORMATION: A very specific proposed action was developed for the area, and included timber harvest, reforestation activities and watershed/fisheries rehabilitation as well as wildlife improvements, through implementation of timber sales. The scope of the proposed action is limited to timber harvesting, reforestation, precommercial thinning, related road construction, road removal, reconstruction activities and stream channel restoration and stabilization. During development of the proposed action and alternatives to the proposed action, emphasis has been placed on the water resource needs and visual concerns of local residents.

Eight alternatives were developed, including a No-Action Alternative. Alternative 7 is the alternative preferred by the Forest Service. Under Alternative 7, the harvest of green, dead and dying timber is scheduled for implementation in three separate but related projects. The projects would produce an estimated 10.5 million board feet of timber and treat 25 timber harvest units. Harvest methods include, commercial thin, salvage, group selection and group shelterwood using helicopter and cable yarding. In this proposal 1 mile of road will be constructed, 2.39 miles will be reconstructed and 13.08 will be reconditioned. Road removal projects will involve the treatment of new road construction and existing roads identified in the road management plan as not being needed for future management needs. With the removal of roads various miles of stream course will also undergo restoration.

Management activities would be administered by the Wallace Ranger District of the Idaho Panhandle National Forests in Shoshone County, Idaho. This FEIS will tie to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area.

Dated: April 29, 1994.

Steve Williams,

District Ranger, Wallace Ranger District, Idaho Panhandle National Forests.

[FR Doc. 94–11318 Filed 5–10–94; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

LA–146 Cattleman's Stockyard, Inc., Clarence, Louisiana.

NC–167 Foothills Livestock Auction, Inc., Spindale, North Carolina.

OH–160 Michigan Livestock Exchange, Columbus Grove, Ohio.

TX–343 Clifton Livestock Commission Co., Inc., Clifton, Texas.

Pursuant to the authority under section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, room 3408–South Building, US. Department of Agriculture, Washington, DC 20250 by May 20, 1994. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 5th day of May 1994.

Tommy Morris,

Acting Director, Livestock Marketing Division.

[FR Doc. 94–11420 Filed 5–10–94; 8 45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the Commission will hold a community forum on Wednesday, June 1, 1994, from 9 a.m. until 5 p.m. at the Clarion Hotel, 4345 North Lincoln Boulevard in Oklahoma City and Thursday, June 2, 1994, from 9 a.m. until 5 p.m. at the Doubletree Hotel at Warren Place, 6110 South Yale in Tulsa. The purpose of the community forum is to obtain information on selected education and employment issues in Oklahoma as they affect minorities, women, and persons with disabilities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 3, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–11463 Filed 5–10–94; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Public Hearings on Section 232 National Security Investigation of Imports of Crude Oil and Petroleum Products

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The Bureau of Export Administration (BXA) is holding public hearings on the investigation that the Department of Commerce initiated, on April 5, 1994, to determine the effects on the national security of imports of crude oil and refined petroleum products under section 232 of the Trade Expansion Act of 1962, as amended. This notice identifies the issues on which the Department is interested in obtaining the public's views. It also sets forth the procedures for public participation in the hearings.

DATES: The hearings will be held in New York, New York, on Monday, June 6, 1994; in Dallas, Texas, on Monday, June 13, 1994; and in Santa Clara, California, on Thursday, June 16, 1994. Requests to speak are due by Monday, May 23, 1994. The hearing in New York will be held in the Ceremonial Courtroom of the U.S. Court of International Trade, One Federal Plaza. The hearing in Dallas will be held at the Joe C. Thompson Amphitheatre, Cityplace Center East, 2711 N. Haskill. The hearing in Santa Clara will be held at the City of Santa Clara Council Chambers, 1500 Wurburton Avenue.

ADDRESSES: Send requests to speak and written copies of the oral presentation to Steven C. Goldman, Deputy Director, Office of Industrial Resource Administration, room 3878, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Senior Industry Analyst, Office of Foreign Availability, Telephone: (202) 482–0074.

SUPPLEMENTARY INFORMATION:

I. Background and Specific Comments Requested

On March 11, 1994, the Independent Petroleum Association of America petitioned the Department of Commerce to initiate an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of crude oil and petroleum products.

On April 5, 1994, the Department of Commerce formally accepted the petition and initiated an investigation. The findings and recommendations of the investigation are to be reported by the Secretary of Commerce to the President no later than December 31, 1994 (i.e., within 270 days). For further details on this investigation, see the **Federal Register** of April 12, 1994 (59 FR 17335).

Consistent with the interest of the U.S. Department of Commerce in soliciting public comments on issues affecting U.S. industry and national security, the Bureau of Export Administration (BXA) is holding public hearings as part of the investigation. The presentations at the hearings will assist the Department in determining whether imports of crude oil and petroleum products constitute a threat to the national security and in formulating remedies if such a threat is found to exist.

The Department is particularly interested in comments and information directed to the criteria listed in § 705.4 of the National Security Industrial Base Regulations (15 CFR parts 700 to 709) (the "regulations") as they affect national security, including the following:

(a) Quantity of the articles subject to the investigation and other circumstances related to the importation of such articles;

(b) Domestic production and productive capacity needed for these articles to meet projected national defense requirements;

(c) Existing and anticipated availability of human resources, products, raw materials, production equipment, facilities, and other supplies and services needed to produce these articles;

(d) Growth requirements of domestic industries needed to meet national defense requirements and the supplies and services (including investment, exploration and development) necessary to assure such growth;

(e) The impact of foreign competition on the economic welfare of the domestic industry;

(f) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects; and

(g) Any other factors that are causing, or will cause, a weakening of our national economy.

II. Public Hearings and Comment Procedures

The public hearings are scheduled to be held in New York, New York on Monday, June 6, 1994; in Dallas, Texas, on Monday, June 13, 1994; and in Santa Clara, California, on Thursday, June 16, 1994. The hearings will commence at 8:30 a.m. and end at 5 p.m. The New York hearing will be held in the ceremonial courtroom of the U.S. Court of International Trade, One Federal Plaza. The Dallas hearing will be held at the Joe C. Thompson Amphitheatre, Cityplace Center East, 2711 N. Haskill. The Santa Clara hearing will be held at the City of Santa Clara Council Chambers, 1500 Wurburton Avenue.

A. Procedure for Requesting Participation

The Department encourages interested public participants to present their views orally at the hearings. Any person wishing to make an oral presentation at

the hearings must submit a written request to the Department of Commerce at the address indicated in the ADDRESS section of this notice. The request to participate in the hearings must be accompanied by 10 copies of a summary of the oral presentation. The written request and summary must be received by the Department no later than Monday, May 23, 1994. In addition, the request to speak should contain a daytime phone number where the person who will be making the oral presentation may be contacted before the hearing. Please note that the submission of comments for presentation at the public hearings is separate from the request for written comments contained in the April 12, 1994, **Federal Register** notice.

Since it may be necessary to limit the number of persons making presentations, the written request to participate in the public hearings should describe the individual's interest in the hearings and, where appropriate, explain why the individual is a proper representative of a group or class of persons that has such an interest. If all interested parties cannot be accommodated at the hearings, the summaries of the oral presentations will be used to allocate speaking time and to ensure that a full range of comments are heard.

Each person selected to make a presentation will be notified by the Department of Commerce no later than 5 p.m. on Thursday, May 26, 1994. The Department will arrange the presentation times for the speakers. Attendees will be seated on a first-come, first-served basis. On the day of the hearing, persons selected to be heard should bring 100 copies of the summary of their oral presentation to the hearing address indicated in the DATES section of this notice.

Copies of the requests to participate in the public hearings and the summaries of the oral presentations will be maintained at the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*) Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

B. Conduct of the Hearing

The Department reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. Each speaker will be limited to 10 minutes, and comments must be directly related to the criteria listed in § 705.4 of the "regulations".

A Commerce official will be designated to preside at the hearings. Representatives from the Departments of Energy and Interior will also participate in the hearings. This will not be a judicial or evidentiary-type hearing. Only those conducting the hearing may ask questions, and there will be no cross-examination of persons presenting statements.

Any further procedural rules for the proper conduct of the hearing will be announced by the presiding officer.

Dated: May 6, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–11410 Filed 5–6–94; 3:08 pm]

BILLING CODE 3510–DT–P

Foreign-Trade Zones Board

[Docket 79–91]

Foreign-Trade Zone 72, Indianapolis, IN; Withdrawal of Application for Subzone Status for Hurco Machine Tool Plant

Notice is hereby given of the withdrawal of the application submitted by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the machine tool manufacturing facility of Hurco Companies, Inc., located in Indianapolis, Indiana. The application was filed on November 6, 1991 (56 FR 65040, 12/13/91).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: May 3, 1994

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–11447 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 4–94]

Foreign-Trade Subzone 59A, Lincoln, NE; Request for Expanded Manufacturing Authority; Kawasaki Motors Manufacturing Corporation U.S.A. Plant (Utility Work Trucks); Extension of Public Comment Period

The comment period for the above case, requesting authority to manufacture utility work trucks under zone procedures within Subzone 59A (59 FR 2592, 1/18/94; 59 FR 14607, 3/29/94), is further extended to June 2, 1994, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: May 3, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–11448 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether an amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act

and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether the Secretary of Commerce should issue an amended Certificate to the applicant. An original and five (5) copies of such comments should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92–A0015."

The California Dried Fruit Export Trading Company's original Certificate was issued on January 27, 1986 (51 3996, **Federal Register**, January 31, 1986). A summary of the application for an amendment follows:

Summary of the Application

Applicant: California Dried Fruit Export Trading Company, 64 North Fulton Street, Fresno, California 93776.

Contact: Kermit W. Almstedt, Telephone: (202) 383–5300.

Application No.: 85–3A015.

Date Deemed Submitted: April 28, 1994.

Proposed Amendment: California Dried Fruit Export Trading Company seeks to amend its Certificate to add one company, Mariani Raisin Co., Inc. as a new "Member" of the Certificate within the meaning of 15 C.F.R. 325.2(1).

Dated: May 5, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–11347 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–DR–P

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on June 1, 1994. The meeting will be from 2 p.m. to 4 p.m. in the Conference Center on the Lexington Level at the office of KPMG Peat Marwick, 345 Park Avenue, New York, New York 10154.

The Committee advises Department of Commerce officials on textile and apparel export issues.

Agenda: The Economic Outlook for the Textile and Apparel Industry, the "Big Emerging Markets" Program, review and critique of the Office of Textiles and Apparel export expansion program, the effect on the textile industry of the implementation of recent changes in the General Agreement on Tariffs and Trade (GATT), and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/482–5155).

Dated: May 5, 1994.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–11446 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–DR–F

Minority Business Development Agency

Business Development Center Applications: Riverside, CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from October 1, 1994 to September 30, 1995, is estimated at $333,125. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Riverside, California Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to preforming the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is June 21, 1994. Applications must be postmarked on or before June 21, 1994.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development

Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/744-3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105; June 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director San Francisco Regional Office at 415/744-3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they 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 assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—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.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance 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.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

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 applies.

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 applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," with the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD-512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 2, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94-11310 Filed 5-10-94; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications: Columbus, Georgia

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from October 1, 1994 to September 30, 1995 is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. The Federal amount includes $4,125 for an annual audit fee. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Columbus, Georgia geographic service area.

The award number for this MBDC will be 04-10-94010-01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC Program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of

management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest points score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for application is June 17, 1994. Applications must be postmarked on or before June 17, 1994.

ADDRESSES: Atlanta Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., Suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.

FOR FURTHER INFORMATION CONTACT: Wilfredo J. Gonzalez, Regional Director, Atlanta Regional Office, telephone (404) 730–3300.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-application conference to assist all interested applicants will be held on June 1, 1994, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., Room 1715, Atlanta, Georgia 30308–3516.

Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they 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 assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—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.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance 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.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

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 applies.

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 applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR 28 Part 28, Appendix B.

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 Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary

Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Wilfredo J. Gonzalez,

Regional Director, Atlanta Regional Office.

[FR Doc. 94–11349 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Augusta, GA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from October 1, 1994 to September 30, 1995 is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. The Federal amount includes $4,124 for an annual audit fee. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Augusta, Georgia geographic service area.

DATES: The award number for this MBDC will be 04–10–94009–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC Program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest points score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for application is June 17, 1994. Applications must be postmarked on or before June 17, 1994.

ADDRESSES: Atlanta Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW, suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.

FOR FURTHER INFORMATION CONTACT: Wilfredo J. Gonzalez, Regional Director, Atlanta Regional Office, telephone (404) 730–3300.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-application conference to assist all interested applicants will be held on June 1, 1994, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they 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 assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—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 honestly or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the

award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance 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.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

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 applies.

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 applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR 28 Part 28, Appendix B.

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 Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure Form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 4, 1994.

Wilfredo J. Gonzalez

Regional Director, Atlanta Regional Office.

[FR Doc. 94–11350 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Las Vegas, Nevada

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from October 1, 1994 to September 30, 1995, is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Las Vegas, Nevada Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsible. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is June 21, 1994. Applications must be postmarked on or before June 21, 1994.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105; June 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they 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 assurance that an applicant may have received , there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—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.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

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 applies.

Drug Free Workplace—Grantees (as defined at is 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 applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 2, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–11309 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Nashville, TN

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from October 1, 1994 to September 30, 1995 is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. The Federal amount includes $4,125 for an annual audit fee. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions for combinations thereof. The MBDC will operate in the Nashville, Tennessee geographic service area.

The award number for this MBDC will be 04–10–94011–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC Program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority business, individuals and organizations (50 points); the resources available to the firm in providing business development

services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest points scored will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for application is June 17, 1994. Applications must be postmarked on or before June 17, 1994.

ADDRESSES: Atlanta Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.

FOR FURTHER INFORMATION, CONTACT: Wilfredo J. Gonzalez, Regional Director, Atlanta Regional Office, telephone (404) 730–3300.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-application conference to assist all interested applicants will be held on June 1, 1994, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, N.W., room 1715, Atlanta, Georgia 30308–3516.

Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they 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 assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—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 honestly or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance 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.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

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 applies.

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 applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts of more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR 28 Part 28, Appendix B.

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 Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: May 4, 1994.

Wilfredo J. Gonzalez,

Regional Director, Atlanta Regional Office.

[FR Doc. 94–11351 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

[Docket No: 931111–3311]

Continuation of Fire Research Grants Program

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice announcing NIST continuation of fire research grants program.

SUMMARY: The purpose of this notice is to inform potential applicants that the Fire Research Program, National Institute of Standards and Technology, is continuing its Fire Research Grants Program. Previous notices of this research grant program were published in the **Federal Register** on November 19, 1984 (49 FR 45636), May 6, 1986 (51 FR 16730), June 5, 1987 (52 FR 21342), June 6, 1988 (53 FR 20675), May 31, 1989 (54 FR 23243), July 23, 1990 (FR 90–17041), February 20, 1991 (46 FR 13250), May 7, 1991 (FR 91–10717), April 22, 1992 (FR 57–14695), and March 17, 1993 (FR 58–14379) (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research and Standards.").

DATES: There is no closing date for receipt of applications. Applications will be accepted at any time.

ADDRESSES: Applicants must submit an original and two copies of the application. The following standard forms must be used in applying for assistance under this program: Standard Form 424, Application for Federal Assistance (Rev. 4–88); Standard Form 424A, Budget Information—Non-Construction Programs (Rev. 4–88); and Standard Form 424B (4–88), Assurances—Non-Construction Programs (Rev. 4–88). Building an Fire Research Laboratory, Attention: Sonya Cherry, Building 226, Room B206, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–0001.

FOR FURTHER INFORMATION CONTACT: Technical questions concerning the NIST Building and Fire Research Laboratory may be directed to the above address or call Sonya Cherry at (301) 975–6854.

Administrative questions concerning the NIST Fires Research Grants Program may be directed to the Grants Office at (301) 975–6329. Written inquiries should be forwarded to the following address: Grants Office, Acquisition and Assistance Division, Building 301/Rm. B129, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

SUPPLEMENTARY INFORMATION: As authorized by Section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreement, a basic and applied fire research program. Academic institutions, non-Federal agencies, independent and industrial laboratories are considered eligible for this program. This program has been in existence for several years at approximately $1.5 million per fiscal year. No increase in funds has taken place. The Fire Research Program is limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Grants awarded under the Fire Research program will generally provide financial assistance to the recipient without substantial NIST involvement in the projects. Cooperative agreements awarded for Fire Research projects will generally involve a close working relationship between a group of NIST experts and the recipient. No matching funds are required. Proposals will be considered for research projects from one to three years. All grant proposals submitted must be in accordance with the programs and objectives listed below.

Program Objectives

a. *Fire Protection Applications:* Researcges, develops and demonstrates the application to building fire problems of fire protection analytical (computerized) tools and methods of assessing the ignition and burning rate of contents of buildings. This includes: developing a performance based fire code and methods of assessing fire risk; developing methods of evaluating and predicting the performance of and interactions between building fire safety design features; developing an understanding of the burning rate of furniture and other building contents; developing a data base that provides the necessary input to users of the analytical tools; and operating the Fire Research Information Services which supports the entire laboratory staff and the fire community and has an on-line bibliographic data base.

b. *Fire Modeling:* Performs research on and develops analytical models for the quantitative prediction of the consequences of fires and the means to assess the accuracy of those models. This includes: Creating advanced, usable models for the calculation of the effluent from building fires; modeling the spread of fire over furniture and building elements such as walls; developing field and zone modeling techniques to predict the movement of fire effluent in buildings and the effectiveness of fire sensors; and developing a protocol for determining the accuracy of both the algorithms used in the fire models as well as the comprehensive models themselves.

c. *Large Fire Research:* Performs research on and develops techniques to measure, predict the behavior of, and mitigate large fire events. This includes: understanding the mechanisms of large fires that control the gas phase combustion, burning rate, thermal and chemical emissions, transport processes; developing techniques for computer simulation; developing field measurement techniques to assess the near and far field impact of large fires and their plumes; performing research on the use of combustion for environmental cleanup; predicting the performance and environmental impact of fire protection measures and fire fighting systems and techniques; developing and operating the Fire Research Program large scale experiment facility.

d. *Smoke Dynamics Research:* Produces scientifically sound principles, metrology, data, and predictive methods for the formation/evolution of smoke components in flames for use in understanding and predicting general fire phenomena. This includes: Research on the effects of within-flame and post-flame fluid mechanics on the formation and emission of smoke, including particulates, aerosols, and combustion gases; understanding the mechanistic pathway for soot from chemical inception to post-flame agglomerates; developing calculation methods for the prediction of the yields of CO (and eventually other toxicant) as a function of fuel type, availability of air, and fire scale.

e. *Materials Fire Research:* Performs research to understand fundamentally the mechanisms that control the ignition, flame spread, and burning rate of materials and the chemical and physical characteristics that affect these aspects of flammability; develops methods of measuring and predicting the response of a material to a fire. This includes: characterizing the burning rates of charring and non-charring polymers and composites; delineating and modeling the enthalpy and mass

transfer mechanisms of materials combustion; and developing computational molecular dynamics and other mechanistic approaches to understand the relationships between polymer structure and flammability.

f. *Fire Sensing and Extinguishment:* Develops understanding, metrology, and predictive methods to enable high-performance fire sensing and extinguishment systems; devises new approaches to minimizing the impact of unwanted fires and the suppression process. This includes: research for the identification and *in-situ* measurements of the symptoms of pending and nascent fires or explosions, and the consequences of suppression; devising or adapting monitors for these variables and creating the intelligence for timely interpretation of the data; determining mechanisms for deflagration and detonation suppression by advanced agents and principles for their optimal use; modeling the extinguishment process; and developing performance measures for the effectiveness of suppression system design.

Proposal Review Process

All proposals are assigned to the appropriate group leader of the eight programs listed above for review, including external peer review, and recommendations on funding. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Deputy Director. Applicants should allow up to 60 days processing time. Proposals are evaluated for technical merit by at least three professionals from NIST, the Building and Fire Research Laboratory, or technical experts from other interested government agencies and in the case of new proposals, experts from the fire research community at large.

Evaluation Criteria

a. Rationality	0–20
b. Qualification of Technical Personnel	0–20
c. Resources Availability	0–20
d. Technical Merit of contribution	0–40

Selection Procedures

The results of these evaluations are transmitted to the group leader of the appropriate research unit in the Building and Fire Research Laboratory who prepares an analysis of comments and makes a recommendation. The recommendation is forwarded to the Deputy Director of the Building and Fire Research Laboratory who will also consider compatibility with programmatic goals and financial feasibility before making the final decision.

Paperwork Reduction Act

The SF–424, SF424A and SF424B mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and has been approved by OMB under Control No. 0348–00343, 0348–0044 and 0348–0040.

Additonal Requirements

Applicants that incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Applicants are also hereby notified that notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DoC to cover pre-award costs. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Applicants are reminded that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by fire or imprisonment as provided in 18 U.S.C. 1001.

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 DoC are made;

Primary Applicant Certification. All primary applicants must submit a completed Form CD–511, "Certification Regarding Dabarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirement and Lobbying." Applicants are also hereby notified on the following:

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 applies;

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 applies;

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 use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more the $100,000, and loans and loan guarantees for more the $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. *Anti-Lobbying Disclosure.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B .

Lower Tier Certification. Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

All for-profit and nonprofit applicants will be 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 an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award, increased funding, or extending the period of performance is at the total discretion of NIST.

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

Dated: May 5, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–11396 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–13–M

[Docket No.: 920521-4095]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of establishment of a Laboratory Accreditation Program (LAP)—NVLAP Calibration Laboratories Accreditation Program.

SUMMARY: The National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology (NIST), will accept applications from laboratories seeking accreditation under the Calibration Laboratories Accreditation Program. The program is in accord with the intent of the original request by the National Conference of Standards Laboratories as announced previously in the **Federal Register**.

Due to the large number of anticipated responses to this program, applications will be processed in order of the date received.

Accreditation will be offered to all applicant laboratories that fulfill the requirements of the National Voluntary Laboratory Accreditation Program (NVLAP).

FOR FURTHER INFORMATION CONTACT: Persons desiring to obtain an application package or further information concerning the Calibration Laboratories Accreditation Program should contact the National Voluntary Laboratory Accreditation Program by mail at the National Institute of Standards and Technology, Building 411, room A162, Gaithersburg, MD 20899; or by telephone (301-975-4016) or FAX (301-926-2884).

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with NVLAP Procedures (15 CFR part 7). In a **Federal Register** Notice dated May 18, 1992, (57 FR 21073), the National Institute of Standards and Technology (NIST) announced the decision to develop the program, "Accreditation for Calibration Laboratories," requested from the National Conference of Standards Laboratories in a letter dated June 13, 1991, announced in the **Federal Register** of August 21, 1991, (56 FR 41526).

Administrative and general technical criteria have been developed and incorporated into a Procedure and General Requirements Handbook (NIST Handbook 150). A companion draft Calibration Laboratories Technical Guide (NIST Handbook 150-2) contains amplifying technical information for each of the eight fields of calibration. Technical experts, selected and trained by NVLAP, will use the NIST Handbook 150 and the Technical Handbook to conduct the on-site assessment. They will present their findings to the applicant calibration laboratory at the time of assessment; however, the final evaluation will be made by NVLAP-selected panels.

Proficiency testing will be used, along with an on-site assessment, to determine the competence of the applicant calibration laboratories to perform calibrations at the claimed levels of uncertainty. Proficiency testing will be conducted annually in at least one parameter for each field of calibration for which a laboratory applies.

An application package consisting of the NIST Handbook 150, Technical Guide, application forms (OMB Control No. 0693-003) and fee schedule will be provided on request. Fees are charged to laboratories seeking accreditation in two stages. The Stage I fee is standard and is charged to all applicant laboratories. It covers the cost of initial review of the application, quality manual, and related documentation. The Stage II fee is variable, based on the scope of accreditation desired by the applicant laboratory.

After the laboratory has successfully fulfilled Stage I, the fees for Stage II will be established to include administrative/technical support, on-site assessment, and proficiency testing costs.

NVLAP will publish a directory of all accredited calibration laboratories and the accreditation will be renewable annually.

Dated: May 5, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94-11395 Filed 5-10-94; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[I.D. 050494E]

North Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Observer Oversight Committee (Committee) will hold a meeting on May 26-27, 1994, at the Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Seattle, WA. The meeting will begin at 9 a.m. on May 26, in room 2079, Building 4, and will continue into May 27, if necessary.

The Committee will receive reports from NMFS and the Alaska Department of Fish and Game on implementation of the North Pacific Fisheries Research Plan, including estimates of first-year fee percentages. The Committee will review proposed budgets and develop recommendations for the Council when it meets in Anchorage the week of June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271-2809, at least 7 working days prior to the meeting date.

Dated: May 5, 1994.

David S. Crestin,

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

[FR Doc. 94-11338 Filed 5-10-94; 8:45 am]

BILLING CODE 3510-22-F

[I.D.041994A]

Marine Mammals

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

ACTION: Receipt of Application to Modify Permit No. 836 (P79F).

SUMMARY: Notice is hereby given that Institute of Marine Science, University of California, Santa Cruz, CA 95064 (Principal Investigators: Drs. Daniel P. Costa, Burney J. LeBoeuf, and Charles L. Ortiz), has requested a modification to Permit No. 836.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713-2289); and

Southwest Region, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of

Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 836, issued on May 12, 1993 (58 FR 29199) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 836 authorizes the Permit Holder to conduct various research activities on Northern elephant seals (*Mirounga angustirostris*) over a 5-year period. These activities include, among other things, capture, tagging and marking, handling, temporary captivity and translocation upon release. Activities are authorized to be conducted on Año Nuevo.

The Permit Holder requests authorization to: Translocate and release up to 40 animals each year to a location 5 miles south of the Sur Ridge or from a point south of Pt. Sur (site of the sound source for the proposed Acoustic Thermography of the

Ocean Climate (ATOC) experiment); attach an acoustic data logger (sound recorder) to the dorsal midline on the back; play killer whale sounds in the track of homing seals (when the ATOC sound source is off); and extend the area of take to include Gorda and Piedras Blancas in Central California.

Dated: May 3, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–11355 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 042994A]

Marine Mammals

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

ACTION: Receipt of applications for scientific research permits (P317B and P317C).

SUMMARY: Notice is hereby given that Mr. Jeffery D. Goodyear, 1533 Gladstone Avenue, Victoria, BC V8R 1S4, Canada has applied in due form for two permits (P317B and P317C) to take (harass) cetaceans. Ms. Janice Straley, P.O. Box 273, 4501 Halibut Point Road, Sitka, AK 99835 is co-applicant on application P317C.

DATES: Written comments must be received by June 10, 1994.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9328); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7235).

Written data or views, or requests for a public hearing on these requests, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit application P317B requests authorization for the harassment of up to 150 humpback whales (*Megaptera novaeangliae*), 150 fin whales (*Balaenoptera physalus*), and 150 northern right whales (*Eubalaena glacialis*) annually, over a 5-year period, during repeated approaches for purposes of: (1) Tagging with VHF radio, sonic, or satellite-linked tags; and/or (2) photographing and filming for purposes of identification, behavioral documentation, and assessing tag status. The proposed activities will be conducted in the western North Atlantic.

Permit application P317C requests authorization for the harassment of up to 150 humpback whales annually, over a 5-year period, during repeated approaches for purposes of: (1) Tagging with VHF radio, sonic, or satellite-linked tags, and skin sampling; and (2) photographing and filming for purposes of identification and assessing tag status. The proposed activities will be conducted in Alaskan waters.

Dated: May 3, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–11356 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of a Collection of Information About Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval through May 31, 1997, to collect information about product-related injuries.

Section 5(a) of the Consumer Product Safety Act 915 U.S.C. 2054(a)) requires the Commission to collect information related to the cause and prevention of death, injury, and illness associated with consumer products, and to conduct continuing studies and investigations of deaths, injuries, diseases, and economic losses resulting from accidents involving consumer products. The Commission uses this information to support rulemaking proceedings, development and improvement of voluntary standards, information and education programs, and administrative and judicial proceedings to remove unsafe products from the marketplace and consumers' homes.

Persons who have been involved in or who have witnessed accidents associated with consumer products are an important source of information about deaths, injuries, and illnesses resulting from such accidents. From consumer complaints, newspapers accounts, death certificates, hospital emergency room reports, and other

sources, the Commission selects a limited number of accidents for investigation. These investigations may involve face-to-face interviews with accident victims or witnesses, or telephone interviews with those persons.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Follow-Up Activities for Product-Related Injuries.

Type of request: Extension of approval.

Frequency of collection: One time for each respondent.

General description of respondents: Persons who have been involved in, or who have witnessed, accidents.

Estimated number of respondents: 2,200 to be interviewed by telephone; 700 to be interviewed at the accident site.

Estimated average number of hours per respondent: 0.34 for each telephone interview; 5.0 for each on-site interview.

Estimated number of hours for all respondents: 4,248.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Donald Arbuckle, Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: May 4, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–11307 Filed 5–10–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Cruise Missile Defense

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Cruise Missile Defense will meet in closed session on May 11–12, 1994 at Science Applications International Corporation, McLean, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on the land attack Cruise Missile threat, and should be comprehensive enough to address operational issues, (offensive as well as defensive), organizational matters, connections to other programs and investment strategy as well as technical issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 6, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

FR Doc 94–11392 Filed 5–10–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

[FE Docket No. ES–98]

Application for Authorization to Export Electricity; Western Systems Power Pool

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Western Systems Power Pool (WSPP) has requested authorization to export electric energy to Canada. The application has been filed on behalf of most jurisdictional members of WSPP.

DATES: Comments, protests or requests to intervene must be submitted on or before July 11, 1994.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Officer) 202–586–9624 or Mike Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On December 3, 1993, as amended March 17, 1994, the Western Systems Power Pool (WSPP or the Pool) filed an application with the Office of Fossil Energy (FE) for authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. Specifically, WSPP was applied for authorization to transmit electric energy to a foreign member of the Pool, British Columbia Hydro and Power Authority (BC Hydro), and other future Canadian members. The Pool's public utility members participating in this application are:

Arizona Public Service Company
Central and South West Services, Inc.
Central Louisiana Electric Company
Idaho Power Company
Kansas City Power and Light Company
Montana Power Company
Nevada Power Company
Oklahoma Electric Company
Pacific Gas & Electric Company
PacificCorp
Public Service Company of Colorado
Public Service Company of New Mexico
Public Service Company of Oklahoma
Pudget Sound Power & Light Company
Sierra Pacific Power Company
Southern California Edison Company
Southwestern Public Service Company
Tuscon Electric Power Company
UtiliCorp United Inc. (West Plains Energy)
Washington Water Power Company
Western Resources, Inc

(San Diego Gas & Electric and Portland General Electric Company were among the applicant companies when WSPP applied to Fe. Both companies, by letter to FE, subsequently withdrew from the WSPP application and were individually issued electricity export authorizations in Docket Numbers EA–100 and EA–97.)

By this joint application, each of the participating Pool members seek an export authorization allowing them to enter into transactions with BC Hydro which involve the exportation of electricity from the United States. All such transactions would be pursuant to the terms and conditions of the WSPP's pooling Agreement and service schedules approved by the Federal Energy Regulatory Commission (FERC).

The WSPP Agreement effects a marketing arrangement pursuant to which the members provide among themselves prescheduled and realtime coordinated short-term power and

energy transactions. The Agreement also sets forth the limitations and parameters affecting all WSPP transactions.

The WSPP Agreement contains four service schedules approved by and on file with FERC. All WSPP transactions are conducted voluntarily among members pursuant to the terms of the service schedules. The transactions are wholesale in nature, involving no retail sales. Specifically, the schedules provide for (1) Economy Energy Service, (2) Unit Commitment Service, (3) Firm System Capacity/Energy Sales or Exchanges, and (4) Transmission Service. Significantly, all transactions among WSPP members must be no more than one year in duration. Also, all transmission services are voluntary.

The WSPP Agreement is not intended to relegate the members to a "traditional power pool" arrangement. The Agreement does not work to supersede any of the contractual relationships of any of the members, and its does not preclude any of the members from entering into future contractual relationships. In the WSPP application, WSPP asserts that, in essence, the WSPP is intended to be superimposed on top of its members' other contractual relationships and thereby serve to capture economic benefits which are not already realized under those existing agreements. Because of its purpose as a supplemental agreement to facilitate the sale of short-term excess capacity and energy, transactions under the WSPP agreement involve the use of only existing facilities and do not require the construction of new facilities.

The electric energy to be exported will be delivered by BC Hydro over the international transmission facilities owned and operated by the Bonneville Power Administration (BPA). The construction, connection, operation, and maintenance of these facilities has been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended by Executive Order 12038. These facilities consist of three electric transmission lines that interconnect with facilities of BC Hydro: Two 500-kilovolt (kV) lines located at Blaine, Washington, (Presidential Permit PP–10) and one 230-kV line at Nelway, British Columbia (Presidential Permit PP–46). In addition, BPA's 230-kV transmission line that connects to West Kootenay Power and Light Company, Limited, also at Nelway, British Columbia, will be used (Presidential Permit PP–36).

Procedural Matters: Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Michael E. Small, Wright & Talisman, suite 600, 1200 G Street, NW., Washington, DC 20005–3802.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or a security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the sufficiency of electric supply within the United States or will not impede or tend to impede the coordination in the public interest of facilities in accordance with section 202(e) of the Federal Power Act. The final decision would be issued to the individual members of WSPP and not to the Power Pool itself.

Before an export authorization may be issued, the environmental impacts of the proposed DOE action (i.e., granting the export authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on May 2, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–11429 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award: Pennsylvania State University

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to award an unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01–94CE15581 to Pennsylvania State University. The proposed grant will provide funding in the estimated amount of $92,131 by the Department of Energy for the purpose of saving energy through the construction and testing of a lightweight, solid polymer, lithium battery to be used in electric automobiles. This high energy density, highly efficient, rechargeable light weight battery will significantly reduce the weight of electric cars and increase the energy efficiency of the cars.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: John Windish, HR–531.23, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by Pennsylvania State University, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. Dr. Harry Allcock will be the principal investigator. He is the inventor of this patentable polymerization method for lightweight lithium batteries and has spent over thirty years in the field of polymers and materials. The Energy Related Inventions Program (ERIP) has been structured, since its beginning in 1975, to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 24 months from the effective date of award.

Issued in Washington, DC, on May 4, 1994.

Scott Sheffield, Director.

Headquarter Operations Division B, Office of Placement and Administration.

[FR Doc. 94–11432 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: F.H. Blake and Associates

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to award an unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01–94CE15606 to F.H. Blake and Associates. The proposed grant will provide funding in the estimated amount of $99,760 by the Department of Energy for the purpose of saving energy through the development and construction of the invention, "Fiber-Optic Anti-Cycling Device for Street Lamps" to control high pressure sodium street lamps so that the lamps come on at dusk and go off at dawn. In addition, the device senses when the lamp fails to operate satisfactorily within a reasonable time and removes power from the lamp. The proposed technology has a strong possibility of adding to the Nation's Energy Resources by enabling the millions of street lamps in the United States to be more energy efficient and to lower their maintenance costs through more effective failure detection.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: John Windish, HR–531.23, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by F.H. Blake and Associates, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. Frederick H. Blake will be the principal investigator. He holds the patent on this technology and has spent twenty-five years in the field of energy management and photo-sensed lighting control. The Energy Related Inventions Program (ERIP) has been structured, since its beginning in 1975, to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the effective date of award.

Issued in Washington, DC, on May 4, 1994.

Scott Sheffield,

Director, Headquarter, Operations Division B, Office of Placement and Administration.

[FR Doc. 94–11431 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award; American Sun Company

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to award an unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FG01–94CE15601 to American Sun Company. The proposed grant will provide funding in the estimated amount of $99,824 by the Department of Energy for the purpose of saving energy through the development and construction of an extra-focal, convective suppressing solar collector to use in such applications as water heating, space heating, industrial process heating, absorption cooling, and desiccant cooling. The proposed technology has a strong possibility of adding to the Nation's Energy Resources by enabling solar energy to be used in household and industrial processes that now can only be served cost effectively by fossil fuels and electricity.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: John Windish, HR–531.23, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by American Sun Company, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. Miles Maiden will be the principal investigator. He has pursued the development, refinement, manufacture, and marketing of this invention since 1990. The Energy Related Inventions Program (ERIP) has been structured, since its beginning in 1975, to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the effective date of award.

Issued in Washington, DC, on May 4, 1994.

Scott Sheffield,

Director, Headquarter Operations Division B, Office of Placement and Administration.

[FR Doc. 94–11430 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–P

Golden Field Office; Non-Competitive Financial Assistance Award To The American Council For An Energy Efficient Economy

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Golden Field Office, through the Denver Support Office, announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i)(B) it intends to award a Cooperative Agreement to the American Council for An Energy Efficient Economy (ACEEE). The amount to ACEEE will be used to assist states and utilities in stimulating the adoption of energy efficiency technologies in the industrial sector.

SUPPLEMENTARY INFORMATION: The proposed project meets the criterion for noncompetitive financial assistance specified in 10 CFR 600.7(b)(i)(B) in that the activities are being or would be conducted by the applicant using its own resources or those donated or provided by third parties. However, the Department of Energy's support of these activities would enhance the public benefits to be derived by assisting the American Council for An Energy Efficient Economy stimulate the transfer of industrial energy efficiency technologies to states and utilities. The Department of Energy knows of no other entity which is conducting or is planning to conduct such an activity.

The activities and goals of the American Council for An Energy Efficient Economy are designed to provide states and utilities technical information on successful industrial energy efficiency programs including an analysis of the co-benefits and secondary impacts of specific technologies now entering the marketplace and critical analysis of exemplary state industrial programs.

PROJECT PERIOD: The project period for the grant award is two years and it expected to begin May 1994. DOE plans to provide funding for year one in the amount of approximately $99,962.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Golden Field Office, Denver Support Office, Dennis D. Maez, 2801 Youngfield Street, suite 380, Golden, Colorado 80401, (303) 231-5750 Extension 140.

Issued in Golden, Colorado, on April 29, 1994.

John W. Meeker,

Chief, Procurement Team.

[FR Doc. 94–11428 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–M

Nevada Operations Office; Award of a Grant, Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of Noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(e)(1), it intends to award a noncompetitive financial assistance grant to the state of Nevada, Division of Emergency Management (NDEM), for providing emergency management initiatives which will ensure the DOE Nevada Operations Office compliance with applicable federal, state, and local environmental requirements.

This grant will implement an agreement with the NDEM to improve the accountability of the DOE in the areas of environmental protection, public health and safety, and emergency management.

SUPPLEMENTARY INFORMATION: The state of Nevada, NDEM, will provide emergency management initiatives to ensure compliance with applicable federal, state, and local regulations at DOE locations in the state of Nevada.

The state of Nevada will assume a more substantive role in overseeing DOE's compliance with state environmental laws, and to help assure the citizens of Nevada that DOE operations do not constitute a health hazard.

Eligibility for the award of this grant is being limited to the state of Nevada because the applicant is a unit of government, and the activity to be supported is related to performance of a governmental function within the subject's jurisdiction, thereby precluding DOE provisions of support to another entity.

The term of this grant is for five years and will commence July 1, 1994, and end June 30, 1999. The total estimated cost of this award is $1.4 million.

FOR FURTHER INFORMATION, CONTACT: U.S. Department of Energy, Nevada Operations Office, Attn: Donald R. Elle, PO Box 98518, Las Vegas, NV 89193–8518.

Issued in Las Vegas, Nevada, on April 25, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94–11427 Filed 5–11–94; 8:45 am]

BILLING CODE 6450–01–M

Nevada Operations Office; Award of a Grant, Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(e)(1), it intends to award a noncompetitive financial assistance grant to the state of Nevada, Department of Conservation and Natural Resources (NDCNR), for providing environmental oversight and monitoring initiatives, which will ensure the DOE Nevada Operations Office compliance with applicable federal, state, and local environmental requirements.

This grant will implement an agreement with the NDCNR to improve the accountability of DOE in the area of environmental protection.

SUPPLEMENTARY INFORMATION: The state of Nevada, NDCNR, will provide independent validation of environmental compliance data, establish environmental cleanup schedules, and provide a mechanism for assisting DOE to prioritize its cleanup activities.

The state of Nevada will assume a more substantive role in overseeing DOE's compliance with state environmental laws, and to help assure the citizens of Nevada that DOE operations do not constitute a health hazard.

Eligibility for the award of this grant is being limited to the state of Nevada because the applicant is a unit of government, and the activity to be supported is related to performance of a governmental function within the subject's jurisdiction, thereby precluding DOE provision of support to another entity.

The term of this grant is five years and will commence July 1, 1994, and end June 30, 1999. The total estimated cost of this award is $4 million.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, Attn: Donald R. Elle, P.O. Box 98518, Las Vegas, NV 89193–8518.

Issued in Las Vegas, Nevada, on April 25, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94–11424 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–M

Nevada Operations Office; Award of a Grant, Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(e)(1), it intends to award a nomcompetitive financial assistance grant to the state of Nevada, Department of Human Resources (NDHR), for providing environmental oversight and monitoring initiatives, which will ensure the DOE Nevada Operations Office compliance with applicable federal, state, and local environmental requirements.

This grant will implement an agreement with the NDHR to improve the accountability of DOE in the areas of environmental protection and public health and safety.

SUPPLEMENTARY INFORMATION: The state of Nevada, NDHR, will develop programs for oversight to ensure compliance with applicable federal, state, and local regulations at DOE locations in the state of Nevada.

The state of Nevada will assume a more substantive role in overseeing DOE's compliance with state environmental laws, and to help assure the citizens of Nevada that DOE operations do not constitute a health hazard.

Eligibility for the award of this grant is being limited to the state of Nevada because the application is a unit of

government, and the activity to be supported is related to performance of a governmental function within the subject's jurisdiction, thereby precluding DOE provisions of support to another entity.

The term of this grant is for five years and will commence July 1, 1994, and end June 30, 1999. The total estimated cost of this award is $1.2 million.

FOR FURTHER INFORMATION, CONTACT: U.S. Department of Energy, Nevada Operations Office, Attn: Donald R. Elle, PO Box 98518, Las Vegas, NV 89193-8518.

Issued in Las Vegas, Nevada on April 25, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 94-11425 Filed 5-10-94; 8:45 am]

BILLING CODE 6450-01-M

Metal Casting Industrial Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the Metal Casting Industrial Advisory Board meeting.

DATES: Thursday, June 2, 1994, 8:30 a.m.-5:30 p.m.; Friday, June 3, 1994, 8 a.m.-2:30 p.m.

ADDRESSES: Sheraton National, Cavalier Rooms B&C, 900 South Orme St., Columbia Pike & Washington, Blvd., Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: Douglas E. Kaempf, Program Manager, Department of Energy, Office of Industrial Technologies (EE-23), 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-5264, Fax: (202) 586-3180.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Metal Casting Industrial Advisory Board serves to provide guidance and oversight of research programs provided under the Metal Casting Competitiveness Research Program and to recommend to the Secretary of Energy new or revised program activities and Metal Casting Research Priorities.

Tentative Agenda

Thursday, June 2, 1994

8:30 Welcome and Introductions—D. Kaempf
8:45 Summary of OIT Metal Casting Program Funding, focus areas, status, future plans—R. Trimberger

Update on Presently Funded Research

9 University of Alabama-Tuscaloosa—T. Piwonka
9:30 University of Northern Iowa—D. Quick
10 Break
10:15 University of Alabama-Birmingham—C. Bates
10:45 Pennsylvania State University—R. Voight
11:15 University of Wisconsin-Milwaukee—P. Rohatgi
11:45 Michigan Technological University—D. Tieder
12:15 Lunch
1 EG&G Idaho—D. Kunerth
1:30 Ohio State College—A. Miller
1:45 Worchester Polytechnic Institute—D. Apelian or M. Makhlouf

Reports On Other Federally Funded Metal Casting Research Programs

2 National Institute of Standards and Technology—R. Schaefer
2:30 National Science Foundation—TBD
3 Break
3:15 DOD/Air Force—T. Broderick
3:45 DOD/Army—W. Donnelly
4:15 DOD/Navy—TBD
4:45 Panel Discussion—National Laboratories Technology Advances & Opportunities
Argonne Los Alamos—TBD
Oak Ridge—TBD
Sandia—TBD
Lawrence Livermore—TBD
Idaho National Engineering—TBD
5:30 Adjournment

Friday June 3, 1994

Industry Presentations on the Current Status and Future Technology Needs of the Metal Casting Industry

8 North American Die Casting Association—B. Walkington
8:30 Steel Founders' Society of America—R. Monroe
9 Non-Ferrous Society—J. Mallory
9:30 American Foundrymen's Society—D. Twarog
10 Break
10:15 Public Participation (5 minute rule per person)
11:30 Lunch
12:30 Continue Advisory Board Discussion
2:15 Summary and wrap-up—D. Kaempf
2:30 Adjournment

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The Chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to the agenda items should contact Douglas E. Kaempf at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. Written statements may be filed with the Committee either before or after the meeting.

TRANSCRIPT: Available for public review and copying at the Freedom of Information Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 5, 1994.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 94-11433 Filed 5-10-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. EL94-62-000, et al.]

Carolina Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 3, 1994

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Co. v. Stone Container Corp.

[Docket Nos. EL94-62-000 and QF85-102-005]

Take notice that on April 20, 1994, Carolina Power & Light Company (CP&L) filed a complaint asking the Federal Energy Regulatory Commission to revoke the qualifying facility ("QF") certification of Stone Container Corporation's cogeneration facility which was certified as a QF in *Stone Container Corp.*, 31 FERC ¶ 62,036 (1985) and recertified in *Stone Container Corp.*, 55 FERC ¶ 62,205 (1991). CP&L's complaint further requests that the Commission: (1) Assert jurisdiction (a) over Stone Container as a public utility and (b) over the contract for Stone Container's sales to CP&L of electric energy at wholesale in interstate commerce pursuant to the Federal Power Act, (2) determine the just and reasonable rate for Stone Container's sales to CP&L, and (3) order the payment of appropriate refunds, plus interest.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Rochester Gas and Electric Co.

[Docket No. ES94-23-000]

Take notice that on April 28, 1994, Rochester Gas and Electric Company (RG&E) filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $200 million of notes and other short-term indebtedness from time to

time as required, but in any event, not later than December 31, 1996. Also, RG&E requests expedited treatment and action by May 19, 1994.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Great Bay Power Corp.

[Docket No. ER94–1176–000]

Take notice that on April 21, 1994, Great Bay Power Corporation (Great Bay) tendered for filing executed copies of service agreements for a number of customers and Great Bay under the Tariff submitted on September 1, 1993, as amended October 14, 1993, in Docket No. ER93–924–000. Unexecuted copies of these service agreements were included as part of the original filing.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Georgia Power Co.

[Docket No. ER94–1175–000]

Take notice that on April 22, 1994, Georgia Power Company filed a letter agreement dated April 11, 1994 revising the contract executed by the United States of America, Department of Energy, acting by and through the Southeastern Power Administration and Georgia Power Company. The letter agreement extends the term of the existing contract for six months to allow the parties to continue negotiations of a new arrangement.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Co.

[Docket No. ER94–1186–000]

Take notice that PacifiCorp, on April 26, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing, both for itself and on behalf of Southern California Edison (SCE) and San Diego Gas & Electric Company (SDG&E), an agreement (Determination No. 3) which establishes the test Rated System Transfer Capability (RSTC) as RSTC. The Determination tendered for filing was agreed upon by the Administrative Representatives who administer the Coordinated Operations Agreement (COA), which coordinated operation of a portion of the 500 Kv Pacific Intertie with the 500 Kv California-Oregon Transmission Project. The COA has been filed with the Commission and is the subject of Docket ER92–626–000.

Copies of this filing have been served upon the parties on the service list, including the CPUC.

SCE and SDG&E both provided certificates of concurrence to this filing.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Power Asia Ltd.

[Docket No. EG94–56–000]

On April 28, 1994, Entergy Power Asia Ltd. ("Entergy Asia"), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Entergy Asia will directly own or operate, or both own and operate, the Datong No. 2 Power Plant ("Datong Facility"). The Datong Facility will consist of the Datong No. 2 Power Plant Phase(1), which consists of an existing operating coal fired power plant, the Datong No. 2 Power Plant Phase(2), consisting of two 600 MW pulverized coal units, which will be added to the Datong Facility, and the Datong No. 2 Power Plant Phase(3), which will also be added to the Datong Facility, increasing the plant size through two additional 600 MW generating units. Entergy Asia and its co-owners of the Datong Facility will provide step-up, auxiliary, and other transformers, and switchyard equipment necessary to interconnect the Datong Facility with the transmission grid. Entergy Asia states that it also may engage in project development activities associated with its acquisition of ownership interests in additional as-yet unidentified eligible facilities and/or exempt wholesale generators that meet the criteria in section 32 of the Public Utility Holding Company Act.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Central Power and Light Co.

[Docket No. ER94–1177–000]

Take notice that on April 21, 1994, Central Power and Light Company (CPL) tendered for filing an amended agreement for Transmission Wheeling Service between CPL and Southwestern Electric Service Company (SESCO). Copies of the filing were served on SESCO and the Public Utility Commission of Texas.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Power Development Corp.

[Docket No. EG94–57–000]

On April 28, 1994, Entergy Power Development Corporation ("Entergy Power"), 900 S. Shackleford Road, Little Rock, Arkansas, 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Entergy Power, indirectly through an affiliate, Entergy Richmond Power Corporation, owns and operates the Richmond Cogeneration Facility, a 250 MW electric generating facility, which is an eligible facility within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA"). In Richmond Power Enterprise, L.P., et al., 62 FERC ¶61,157 (1993), the Commission determined that Entergy Power is an exempt wholesale generator ("EWG") as defined in section 32(a)(1) of PUHCA. In its application, Entergy Power states that it intends to: (i) Engage directly in activities that relate to the development and potential acquisition of ownership interests in as-yet unidentified eligible facilities and/or EWGs and (ii) engage, indirectly through an affiliate—Entergy Power Asia Ltd. ("Entergy Asia")—in the business of owning or operating, or both owning and operating, an additional eligible facility as defined under section 32(a)(2) of PUHCA—the Datong No. 2 Power Plant located in the People's Republic of China ("Datong Facility")—and selling electric energy at wholesale and/or retail, and conducting project development and acquisition activities.

The Datong Facility will consist of the Datong No. 2 Power Plant Phase(1), which consists of an existing operating coal fired power plant, the Datong No. 2 Power Plant Phase(2), consisting of two 600 MW pulverized coal units, which will be added to the Datong Facility, and the Datong No. 2 Power Plant Phase(3), which will also be added to the Datong Facility, increasing the plant size through two additional 600 MW generating units. Entergy Asia and its co-owners of the Datong Facility will provide step-up, auxiliary, and other transformers, and switchyard equipment necessary to interconnect the Datong Facility with the transmission grid.

Comment date: May 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. LG&E Power Marketing Inc.

[Docket No. ER94–1188–000]

Take notice that on April 26, 1994, LG&E Power Marketing Inc. (LPM) tendered for filing, pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207 (1993), its Rate Schedule No. 1, an initial rate schedule for sales of energy and capacity at market-based rates. LPM is a fourth-tier

subsidiary of LG&E Energy Corp., an exempt public utility holding company.

LPM intends to purchase and sell electric energy and capacity as a marketer. Rate Schedule No. 1 provides for the sale of non-firm energy and firm energy and capacity at rates established by agreement between the parties. No sales may be made under the schedule to any entity controlled by, under common control with, or controlling LPM. LPM and its affiliated utility, Louisville Gas and Electric Company (LG&E), intend to offer nonaffiliated power marketers and brokers access to the same information to be provided by LG&E to LPM and access to the services to be provided by LPM by LG&E under the same terms and conditions applicable to LPM. LPM requests an order accepting its rate schedule, effective as of the date of filing, and also requests waivers and preapprovals under various regulations of the Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. The Montana Power Company

[Docket No. ER94-1189-000]

Take notice that on April 28, 1994, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR § 35.13, a Form of Service Agreements with Enron Power Marketing, Inc. (Enron) and Lassen Municipal Utility District (Lassen) under FERC Electric Tariff, Second Revised Volume No. 1 (M-1 Tariff), as well as a revised Index of Purchasers under said Tariff.

A copy of the filing was served upon Enron and Lassen.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota)

[Docket No. ER94-1190-000]

Take notice that on April 28, 1994, Northern States Power Company (Minnesota) tenders a Blue Lake Emergency Connection Agreement between NSP and City of Shakopee.

NSP requests this Agreement be effective upon the date of execution, April 4, 1994. NSP requests waiver of the Commission's Notice Requirements under Part 35 so the Agreement may be effective as of the date of execution.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER94-1191-000]

Take notice that on April 28, 1994, PacifiCorp, tendered for filing, in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations the April 11, 1994 Letter Agreement between PacifiCorp and Tri-State Generation and Transmission Association, Inc. (Tri-State).

PacifiCorp respectfully requests, pursuant to 18 CFR § 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of May 1, 1994 be assigned to the Letter Agreement.

Copies of this filing were supplied to the Wyoming Public Service Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Mexico

[Docket No. ER94-1192-000]

Take notice that on April 28, 1994, Public Service Company of New Mexico (PNM) tendered for filing a Notice of Termination of the 1991-1994 Power Sale Agreement between Arizona Electric Power Cooperative, Inc. (AEPCO) and PNM (PNM Rate Schedule FERC No. 91). Termination of that agreement is to be effective as of May 31, 1994. PNM requests waiver of the applicable notice requirements.

Copies of the filing have been served upon AEPCO and the New Mexico Public Utility Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. PSI Energy, Inc.

[Docket No. ER94-1193-000]

Take notice that on April 28, 1994, PSI Energy, Inc. (PSI), tendered for filing an Interchange Agreement, dated February 1, 1994, between PSI and Big Rivers Electric Corporation (Big Rivers).

The Interchange Agreement provides for the following service between PSI and Big Rivers.

1. Service Schedule A—Emergency Service
2. Service Schedule B—Short-Term Power and Energy
3. Service Schedule C—Economy Energy
4. Service Schedule D—Non-Displacement Energy
5. Service Schedule E—Limited-Term Capacity and Energy

PSI and Big Rivers have requested an effective date of June 27, 1994.

Copies of the filing were served on Big Rivers Electric Corporation, the Kentucky Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Power Co.

[Docket No. ER94-1194-000]

Take notice that on April 28, 1994, Duke Power Company (Duke) tendered for filing with the Commission Supplement No. 7 to Supplement No. 24 to the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). Supplement No. 7 changes Duke"s monthly transmission capacity rate under the Interchange Agreement from $1.1521 per kW per month to $1.1409 per kW per month. Duke has proposed an effective date of July 1, 1994, for the revised charge.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Sierra Pacific Power Co.

[Docket No. ER94-1195-000]

Take notice that on April 28, 1994, Sierra Pacific Power Company (Sierra) tendered for filing: (1) Transmission Service Agreement between Sierra and Mt. Wheeler Power, Inc. (Mt. Wheeler) and (2) Amendment No. 1 to Operating Agreement No. 2 between Sierra and Mt. Wheeler. Sierra proposes that both such contractual documents be accepted and permitted to become effective as of June 27, 1994 or such earlier date as the Commission may provide.

Sierra states that the aforesaid transmission agreement is in substance merely an amendment and restatement of an existing agreement with the same expiration date and essentially the same pricing provisions. The basic purposes of the amendment and restatement are: (1) To put together a basic contract and several subsequent amendments and supplements in a single location and (2) somewhat to increase the stipulated level of service in order to meet the expanded needs of the customer. The basic purpose of the operating agreement amendment is to conform with the transmission agreement.

Sierra asserts that the filing has been served on Mt. Wheeler and on the regulatory commissions of Nevada and California.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Tampa Electric Co.

[Docket No. ER94–1196–000]

Take notice that on April 28, 1994, Tampa Electric Company (Tampa Electric) tendered for filing cost support schedules showing recalculation of the Committed Capacity and Short-Term Power Transmission Service rates under Tampa Electric's agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale). Tampa Electric states that the recalculated transmission service rates are based on 1993 Form No. 1 data.

Tampa Electric proposes that the recalculated transmission service rates be made effective as of May 1, 1994, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Tampa Electric Co.

[Docket No. ER94–1197–000]

Take notice that on April 28, 1994, Tampa Electric Company (Tampa Electric) tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled short-term firm interchange service provided under interchange contracts with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Oglethorpe Power Corporation, Orlando Utilities Commission, Reedy Creek Improvement District, St. Cloud Electric Utilities, Seminole Electric Cooperative, Inc., Utilities Commission of the City of New Smyrna Beach, Utility Board of the City of Key West, and the Cities of Gainesville, Homestead, Lake Worth, Lakeland, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric also tendered for filing revised caps on the charges for emergency and scheduled short-term firm interchange transactions under the same contracts.

Tampa Electric requests that the revised daily capacity charge and revised caps on charges be made effective as of May 1, 1994, and therefore requests waiver of the Commission's notice requirements.

Tampa Electric states that a copy of the filing has been served upon each of the above-named parties to interchange contracts with Tampa Electric, as well as the Florida and Georgia Public Service Commissions.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Power Co.

[Docket No. ER94–1198–000]

Take notice that on April 29, 1994, Consumers Power Company (Consumers) tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charge is provided for in Subsection 1.043 of the Agreement, which provides that the annual charge rate may be redetermined effective May 1, 1994 using year-end 1993 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were increased from $16,917.00 to $17,020.00. Consumers requests an effective date of May 1, 1994, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Northern, the Michigan Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11367 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–1204–000, et al.]

Wisconsin Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 4, 1994.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power and Light Co.

[Docket No. ER94–1204–000]

Take notice that on April 29, 1994, Wisconsin Power and Light Company (WP&L) tendered for filing a Bulk Power Sales Tariff. The Tariff provides for sales of Negotiated Capacity and/or Energy, Emergency Energy, and Maintenance Energy. WP&L states that sales under the Tariff will be made at negotiated prices no lower than system incremental energy costs and no higher than the Company's fully allocated cost of capacity plus 110% of incremental energy costs.

WP&L has included with the filing a list of prospective customers under the Tariff in lieu of filing Service Agreements with those thirty (30) customers, and states that service will be provided under the Tariff only to customers who sign Service Agreements. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of June 1, 1994.

WP&L states that copies of this filing have been served on each potential customer whose name is included on the list attached to the filing and on the Public Service Commission of Wisconsin, the Minnesota Public Utilities Commission, the Illinois Commerce Commission, the North Dakota Public Service Commission, the Missouri Public Service Commission, the Michigan Public Service Commission, the Iowa State Utilities Board, the Indiana Utility Regulatory Commission, and the Ohio Public Utilities Commission.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Direct Electric Inc.

[Docket No. ER94–1161–000]

Take notice that Direct Electric Inc., (DIRECT) on April 15, 1994, tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice

and Procedure, 18 CFR 385.205 and 385.207 (1993) a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective the earlier of June 15, 1994 or the date of a Commission granting approval of this Rate Schedule.

DIRECT intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where DIRECT purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, DIRECT will be functioning as a marketer. In DIRECT's marketing transactions, DIRECT proposes to charge rates mutually agreed upon by the parties. In transactions where DIRECT does not take title to the electric power and/or energy, DIRECT will be limited to the role of a broker and will charge a fee for its services. DIRECT is not in the business of producing or contemplate acquiring title any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Montana Power Co.

[Docket No. ER94-1178-000]

Take notice that on April 22, 1994, the Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission a Letter Agreement between Bonneville Power Administration and the Montana Power Company, dated March 15, 1994. Montana requests that the Commission grant a waiver of the 60-days prior notice requirement.

Montana states that the Agreement relates to special storage service provided by Bonneville to the various Northwest utilities under provisions of the Pacific Northwest Coordination Agreement. Copies of the filing were served upon the Bonneville Power Administration.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Les Developpements Hydroelectrique CHI International, Inc.

[Docket No. EG94-54-000]

On April 22, 1994, Les Developpements Hydroelectrique CHI International, Inc., 4269 St. Catherine St., W, suite 600, Westmount, Quebec Canada H3Z 1P7, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant, a Quebec corporation, will be operating hydroelectric facilities owned by Abitibi-Price, Inc. located on the Iroquois River in Iroquois Falls, Ontario, and having a total capacity of 80,135 Kw.

Comment date: May 17, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Consolidated Hydro, Inc.

[Docket No. EG94-55-000]

On April 22, 1994, Consolidated Hydro, Inc., 4269 St. Catherine St., W, Suite 600, Westmount, Quebec Canada H3Z 1P7, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant, a Delaware corporation, will be operating hydroelectric facilities owned by Abitibi-Price, Inc. located on the Iroquois River in Iroquois Falls, Ontario, and having a total capacity of 80,135 Kw.

Comment date: May 16, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Consolidated Company of New York, Inc.

[Docket No. ER94-939-000]

Take notice that on April 20, 1994, Consolidated Company of New York, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Nantahala Power and Light Co.

[Docket No. ER94-1139-000]

Take notice that on April 5, 1994, Nantahala Power and Light Company tendered for filing revised Schedule "PL" rate tariff showing development of charges for the period ending December 31, 1993.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Canal Electric Co.

[Docket No. ER94-1172-000]

Take notice that on April 14, 1994, Canal Electric Company (Canal) tendered for filing an informational filing containing Canal's revised schedule of payments to the Decommissioning Fund.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Co.

[Docket No. ER94-1179-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on April 25, 1994, tendered for filing a Coordination Sales Tariff. The Tariff provides for sales of Negotiated Capacity, General Purpose Energy, and Emergency Energy. Wisconsin Electric states that sales under the tariff will be made at no higher than the Company's fully allocated cost of capacity plus 110% of incremental energy costs. Wisconsin Electric has included with the filing a list of prospective customers under the Tariff in lieu of filing service agreements with those customers, and states that service will be provided under the Tariff only to customers who sign service agreements. Wisconsin Electric requests that the Commission make the Tariff effective sixty days after filing.

Wisconsin Electric states that copies of the filing have been served on each potential customer whose name is included on the list attached to the filing. Additional copies have been served on the Minnesota Public Utilities Commission, the Illinois Commerce Commission, the North Dakota Public Service Commission, the Missouri Public Service Commission, the Montana Public Service Commission, the Michigan Public Service Commission, the Indiana Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Anheuser-Busch, Inc.

[Docket No. QF94-91-000]

On April 25, 1994, Anheuser-Busch, Inc. of One Busch Place, St. Louis, Missouri 63118, submitted for filing an application for certification of a facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility, which will be located in Newark, New Jersey, will consist of two combustion turbine generators, and a supplementary fired heat recovery boiler. Steam recovered from the facility will be used for various process requirements in the

brewery. The net electric power production capacity of the facility will be approximately 124.4 MW. The primary energy source will be natural gas. Installation of the facility is expected to commence in September of 1994.

Comment date: Thirty days from the date published in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11368 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11058–001—Massachusetts]

A.L.L. Natural Resources, Inc.; Availability of Draft Environmental Assessment

May 5, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the proposed Fitchburg Paper Mill Dam #4 Hydroelectric project, located on the North Nashua River, in the City of Fitchburg, Worcester County, Massachusetts and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental effects of the proposed project and has concluded that approval of the project, with appropriate protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Please affix Project No. 11058 to all comments. For further information, please contact Rich McGuire, Environmental Coordinator, at (202) 219–3084.

Lois D. Cashell,

Secretary

[FR Doc. 94–11369 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–377–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

May 3, 1994

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP94–377–000]

Take notice that on April 26, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP94–377–000 an abbreviated application pursuant to section 7(b) of the Natural Gas Act, as amended, and §§ 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission to abandon certain natural gas facilities by transfer to Chevron U.S.A., Inc. (Chevron), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it proposes to abandon (1) a 75% interest in two 1,100 horsepower compressor units located on an offshore platform owned by Chevron; (2) a 40% interest in two 1,100 horsepower compressor units located on another offshore platform owned by Chevron; and (3) approximately 1.96 miles of 8-inch pipeline that connect Chevron's West Cameron Block 564 "CA" platform to its West Cameron Block 564 "A" platform, offshore Louisiana. Natural further states that Chevron currently owns the other percentage interests in the subject compressors. Natural indicates that in consideration for this transfer of facilities to Chevron, Chevron will agree to indemnify Natural and hold it harmless with respect to any and all future liabilities that may arise associated with said facilities, commencing on the date of the facilities transfer. Natural further indicates that it will reimburse Chevron for 50% of the retirement costs prudently incurred by Chevron when the facilities are retired but in no event shall Natural pay more than $100,000 in total. Natural states that the facilities are no longer useful to it, nor are Natural's customers served by the facilities.

Comment date: May 24, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. K N Gas Gathering, Inc.

[Docket No. CP94–397–000]

Take notice that on April 29, 1994, K N Gas Gathering, Inc. (KNGG), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed a petition for declaratory order in Docket No. CP94–397–000, requesting that the Commission declare that facilities to be acquired from its affiliate, K N Interstate Gas Transmission Co. (KNI), are gathering facilities exempt from Commission jurisdiction under Section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

KNGG states that it has agreed to purchase from KNI the Bowdoin Gathering System located in Phillips and Valley Counties, Montana. KNGG states that the Bowdoin facilities are separated into four distinct segments delivering gas into the facilities of Williston Basin Interstate Pipeline Co. (Williston). It is indicated that none of the facilities is attached to the rest of KNI's system. It is also indicated that KNI has sought authorization to abandon these facilities in Docket No. CP94–430–000.

KNGG states that, by applying the modified primary function test as set forth in *Amerada Hess*, 52 FERC ¶ 61,268 (1990), the facilities to be acquired from KNI qualify as gathering facilities exempt from Commission jurisdiction under Section 1(b) of the Natural Gas Act. In support of its claim that the facilities are gathering, KNGG indicates that the subject facilities are short in length, small in diameter, web-like in configuration, and located entirely within the production area. It is also indicated that the facilities operate at a range of between 100 and 180 psig and are attached to approximately 700 wells throughout the system. KNGG also states that the gas gathered in the system

is delivered into four small field compressors which boost the pressure of the gas sufficiently to enter Williston's facilities. In addition, KNGG states that the dehydration plants located in the system perform dehydration required to meet Williston's quality requirements.

Comment date: May 24, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. K N Interstate Gas Transmission Co.

[Docket No. CP94–430–000]

Take notice that on April 29, 1994, K N Interstate Gas Transmission Co. (KNI), P.O. Box 281304, Lakewood, Colorado 80228, filed an application in Docket No. CP94–430–000 pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of facilities constituting its Bowdoin Gathering System located in Phillips and Valley Counties, Montana by transfer to its affiliate K N Gas Gathering, Inc., (KNGG), its all as more fully set forth in the application which is on file with the Commission and open to public inspection.

KNI requests the Commission to authorize the abandonment, by transfer to KNGG, the Bowdoin Gathering System, consisting of the following facilities:

- 76.23 miles of 2-inch pipeline;
- 0.25 miles of 3-inch pipeline;
- 286.71 miles of 4-inch pipeline;
- 69.12 miles of 6-inch pipeline;
- 11.45 miles of 8-inch pipeline;
- 26.16 miles of 10-inch pipeline;
- 25.58 miles of 12-inch pipeline;
- 3.60 miles of 14-inch pipeline;
- compression facilities consisting of one 115 horsepower unit, two 140 horsepower units, and one 60 horsepower unit and;
- various valves, regulators, dehydrators, meters and miscellaneous appurtenant facilities.

KNI indicates that the Bowdoin System constitutes its sole remaining gathering facility and is isolated and distant from its other facilities. Also, KNI states it currently uses the facility only to gather third party gas. KNI states that it would transfer the facility to KNGG at the net book value (estimated at $10,209,655). It is indicated that KNGG has filed concurrently a petition that the Commission declare the Bowdoin Gathering System to be gathering facilities exempt from jurisdiction pursuant to Section 1(b) of the Natural Gas Act.

Comment date: May 24, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, 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 a grant of the certificate and/or 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 applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11370 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–362–000, et al.]

Transcontinental Gas Pipe Line Corporation, et al.; Natural Gas Certificate Filings

May 4, 1994.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corp. and Tennessee Gas Pipeline Co.

[Docket No. CP94–362–000]

Take notice that on April 15, 1994, as supplemented on April 28, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251–1396, and Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed, in Docket No. CP94–362–000, a joint application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of the exchange of natural gas under TGPL's Rate Schedule X–62 and Tennessee's Rate Schedule X–37, all as more fully set forth in the application.

TGPL and Tennessee state that by order issued March 26, 1973, in Docket No. CP73–193–000, they were authorized to exchange up to 1,500 Mcf of gas per day, plus additional volumes which were available and which could be accommodated in the pipeline facilities, for an initial term of one year and month to month thereafter. TGPL and Tennessee maintain that the exchange arrangement was terminated pursuant to its terms by Tennessee providing to TGPL on or about September 28, 1977, written notice of Tennessee's election to terminate such arrangement. TGPL and Tennessee assert that no exchange services have been provided under the exchange arrangement since prior to November 25, 1978. Therefore, TGPL and Tennessee state that they are requesting authorization to abandon the exchange service.

TGPL and Tennessee state that they do not propose to abandon any facilities pursuant to the instant application. They further state that no service to any of their other customers will be affected by the abandonment authorization requested herein.

Comment date: May 25, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Co.

[Docket No. CP94–394–000]

Take notice that on April 29, 1994, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP94–394–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon a sales tap located in Calcasieu Parish, Louisiana, under Tennessee's blanket certificate issued in Docket No. CP82–

413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee requests authorization to abandon and remove the sales tap, the related valve assembly and above ground appurtenances. The sales tap was used for a direct sale of natural gas for irrigation purposes. Tennessee states that the tap has been inactive for some time and that the customer previously serviced by the tap has consented in writing to the abandonment and removal of the tap.

Comment date: June 20, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP94-396-000]

Take notice that on April 29, 1994, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP94-396-000 a request pursuant to §§ 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for authorization to construct and operate a delivery point for Mississippi Valley Gas Company (MVG), under Tennessee's blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that MVG proposed that Tennessee construct the delivery point to enable MVG to source its gas under one or more of Tennessee's existing contracts under Rate Schedule IT. Such gas would be transported pursuant to authority granted Tennessee in Docket No. CP87-115 on June 18, 1987, and § 284.223 of the regulations, and under Tennessee's Rate Schedule IT.

Tennessee proposes to install, own, operate and maintain one four-inch hot tap assembly and DAC, at M.P. 541-1+0.02 in Lauderdale County, Mississippi. It is indicated that the gas quantity that Tennessee proposes to deliver to MVG at the delivery point is: up to 40,000 Dth per day; and up to 14,600,000 Dth per year. It is stated that Tennessee's cost associated with this new delivery point is $31,700, 100% reimbursable by MVG.

Tennessee states that the total quantities to be delivered from MVG will not exceed the total quantities authorized. Tennessee asserts that the establishment of the proposed delivery point is not prohibited by Tennessee's tariff, and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Tennessee's other customers.

Comment date: June 20, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Arkla Energy Resources Co.

[Docket No. CP94-401-000]

Take notice that on April 29, 1994, Arkla Energy Resources Company (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94-401-000 a request pursuant to §§ 157.205, 157.211 and 157.112 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.212) for authorization to upgrade two existing meter stations for increased deliveries to Arkansas Louisiana Gas Company (ALG) and to operate one existing tap for an initial delivery of gas to ALG for resale to a consumer other than the right-of-way grantor for which the tap was originally installed under AER's blanket certificate issued in Docket No. CP82-384-000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER proposes to (1) upgrade an existing 2-inch tap and 1-inch U-Shape meter station currently serving ALG to a 2-inch L-Shape meter station on AER's Line LM-1, Section 10, Township 2 South, Range 14 West, Saline County, Arkansas, for increased service to ALG's Rural Extension No. 1233, (2) upgrade an existing 1-inch tap and 1-inch meter station currently serving an ALG domestic customer to a 2-inch U-Shape meter station on AER's Line B, Section 16, Township 8 North, Range 22 West, Johnson County, Arkansas to service ALG's new Rural Extension No. 1333, and (3) to operate an existing 1-inch domestic tap to AER's Line AM-47, Obadiah Hendricks Survey A-57, Camp County, Texas for initial service to ALG's new domestic customer, Mack Carpenter. The total estimated increased sales is 29,085 Mcf annually and 316 Mcf on a peak day. AER estimates the total cost of construction to be $26,051 which will be reimbursed by ALG.

Comment date: June 20, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, 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 a grant of the certificate and/or 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 applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11371 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 11320–001 Montana]

Hydrogroup, Inc.; Surrender of Preliminary Permit

May 5, 1994.

Take notice that Hydrogroup, Inc., Permittee for the Moose Creek Project No. 11320, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11320 was issued February 8, 1993, and would have expired January 31, 1996. The project would have been located within Gallatin National Forest, on Moose Creek, in Gallatin County, Montana.

The Permittee filed the request on April 25, 1994, and the preliminary permit for Project No. 11320 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11372 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–41–022]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 5, 1994.

Take notice that on May 2, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective April 18, 1994:

Substitute First Revised Sheet No. 64
Substitute First Revised Sheet No. 65

Columbia states that it proposes to modify and supplement its March 18, 1994 filing in Docket No. RP91–41, *et al.*, to reflect the elimination of netting the Over/Under amounts applicable to Texas Gas Transmission Corporation's (Texas Gas) Docket No. RP91–61, as these amounts were netted against the refunds made by Columbia on April 21, 1994. Columbia states that the tariff sheets filed herein reflect only the additional billing approved by the Commission's April 14, 1994, order in this docket.

Columbia states that copies of the filing were served upon Columbia's firm customers, interested state commissions, and to each of the parties set forth in the official service list in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11373 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–158–002]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 5, 1994.

Take notice that on May 2, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following proposed changes to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 1, 1994:

Substitute Original Sheet No. 96
Substitute Original Sheet No. 97
First Revised Sheet No. 460

Columbia states that it tendered this filing in compliance with the Federal Energy Regulatory Commission's (Commission) order issued March 31, 1994 (order) in Docket No. RP94–158, which required, inter alia, that Columbia file (i) tariff sheets which provide an opportunity to elect extended amortization periods of up to three years for the Account 191 direct billing; (ii) an explanation for exceeding the three percent level in the third test interval of the assessment test; (iii) a Schedule A in the same format as prescribed in FERC Form No. 542-PGA (Revised); and (iv) an explanation of the $11 million adjustment booked in November 1993. The order also required Columbia to remove the T&E adjustments from the instant direct billing. Columbia has filed a petition for rehearing of this issue. The order also provided for a customer review process. Columbia believes it has provided all data needed to make an assessment of the filing.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 12, 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11374 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–395–000]

Columbia Gulf Transmission Co.; Application

May 5, 1994.

Take notice that on April 29, 1994, Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–395–000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a natural gas transportation service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia Gulf states that it proposes to abandon, effective November 1, 1994, a natural gas transmission service provided by Columbia Gulf to Columbia Gas Transmission Corporation (Columbia Gas) under Columbia Gulf's Rate Schedule T–1. Columbia Gulf further states that Columbia Gas will no longer need this transportation service from Columbia Gulf and therefore advised Columbia Gulf by notice dated April 27, 1993, of the cancellation of the agreement effective November 1, 1994.

Columbia Gulf says that it does not propose to abandon any facilities as a result of the authorization requested.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 26, 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. 94–11375 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–34–000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 5, 1994.

Take notice that on May 2, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheet, to become effective June 1, 1994:

Third Revised Sheet No. 8A

FGT states that the tariff sheet referenced above is being filed pursuant to Section 25 (Flowthrough Billing Mechanism) of the General Terms and Conditions of FGT's FERC Gas Tariff, Third Revised Volume No. 1. Section 25 sets forth the mechanism by which FGT is permitted to flow through fixed charge allocations of buy-out and buy-down costs billed to FGT by Southern Natural Gas Company (Southern). This mechanism was approved by Commission Order dated June 16, 1989, in Docket No. RP89–44–001.

FGT further states that it is suspending its Annual Unit Take-or-Pay Surcharge effective June 1, 1994, because of the cessation of Southern's fixed charge allocations to FGT after May, 1994. Because of the suspension by the FERC of procedural schedules in the proceedings affecting Southern's allocations of fixed charges and the absence of actual information regarding April and May, 1994, throughput and recoveries, FGT states that it will make a supplemental filing within ninety (90) days of the end of the Annual Recovery Period ending May 31, 1994 and make any related tariff changes at that time.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 12, 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. 94–11376 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–M

Iroquois Gas Transmission System, L.P.; Motion To Make Tariff Sheets Effective

[Docket No. RP94–72–003]

May 5, 1994.

Take notice that on April 29, 1994, Iroquois Gas Transmission System, L.P., (Iroquois), filed a motion requesting that the revised tariff sheets listed in appendix A of the motion be made effective on June 1, 1994.

Iroquois states that all of the tariff sheets listed on appendix A of the motion have been previously filed in this proceeding, with the exception of the three substitute tariff sheets attached to the filing, which update tariff sheets originally filed on December 1, 1993.

Iroquois states that it has served the filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

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 12, 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. 94–11377 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–454–005]

Midwest Gas Storage Inc.; Filing

May 5, 1994

Take notice that on April 29, 1994, Midwest Gas Storage Inc. (Midwest), 13100 Southwest Highway, Palos Park, Illinois 60464, filed in Docket No. CP90–454–005 as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Sheet No. 3 with a proposed effective date of May 15, 1994.

Midwest states that a scaled map of Midwest's system is being filed in substitution of the version filed on April 8, 1994 in Docket No. CP90–454–004, *et al.*

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before May 12, 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 available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–11378 Filed 5–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG94-58-000]

SEI Holdings VIII, Inc.; Application for Commission Determination of Exempt Wholesale Generator Status

May 5, 1994.

On April 29, 1994, SEI Holdings VIII, Inc. ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale operator ("EWG") status pursuant to part 365 of the Commission's regulations.

The Applicant intends to indirectly own and operate an eligible facility, as defined in Section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA"), to be located in Monterrey, in the State of Nuevo León, Mexico through its affiliate Energia de Nuevo León, S.A. de C.V. The facility is scheduled to be completed by September 1, 1996. The Facility will be an approximately 220 MW combined-cycle cogeneration facility that will be gas fired, with fuel oil as a back-up.

In addition, the Applicant intends to engage in project development activities on its own behalf associated with the acquisition of ownership interests in additional facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in Section 32 of PUHCA.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214.). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before May 27, 1994 and must be served on the Applicant. 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. 94-11327 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG94-60-000]

SEI Beteiligungs GmbH, Application for Commission Determination of Exempt Wholesale Generator Status

May 5, 1994.

On April 29, 1994, SEI Beteiligungs GmbH ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to part 365 of the Commission's regulations.

The Applicant intends to indirectly own and operate an eligible facility, as defined in section 32(a)(2) of the Public Utility Holding Company Act of 1935 ("PUHCA"), to be located in Monterrey, in the State of Nuevo León, Mexico through its affiliate Energía de Nuevo León, S.A. de C.V. The facility is scheduled to be completed by September 1, 1996. The Facility will be an approximately 220 MW combined-cycle cogeneration facility that will be gas fired, with fuel oil as a back-up.

In addition, the Applicant intends to engage in project development activities on its own behalf associated with the acquisition of ownership interests in additional facilities or entities that meet the criteria for eligible facilities and/or EWGs set out in Section 32 of PUHCA.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before May 27, 1994, and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on the file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11326 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-225-001]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 5, 1994.

Take notice that on May 2, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet:

Substitute Fifth Revised Sheet No. 10

Texas Gas states that the revised tariff sheet is being filed to correct an error on Fifth Revised Sheet No. 10 which was a part of Texas Gas' April 29, 1994, filing 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 interruptible transportation customers, and is being designated as Substitute Fifth Revised Sheet No. 10.

Texas Gas requests an effective date of June 1, 1994, for the proposed tariff sheet.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas' affected jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 12, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11379 Filed 5-10-94; 8:45 am]

BILLING CODE 6717-01-M

Office of Policy, Planning and Program Evaluation

DOE Headquarters Washington DC Chicago Operations Office

AGENCY: Department of Energy.

ACTION: Acceptance of unsolicited application.

SUMMARY: The Department of Energy (DOE), Office of Policy, Planning and Program Evaluation, through the Chicago Operations Office, announces that it intends to award a grant to the Western Interstate Energy Board (WINB) of Denver, Colorado. The proposed award meets the criteria in 10 CFR 600.14 (d) and 10 CFR 600.14 (e). The financial assistance is for support of the Western Interstate Energy Board workshop on the Linkage Between Western Utility Integrated Resource Planning (IRP) and Regional Transmission Planning in a Competitive Environment. The workshop will be hosted at WINB facilities, and is scheduled for the May 30, 1994 thru December 31, 1994 timeframe.

SUPPLEMENTARY INFORMATION: The workshop will be attended by Western State representatives, and 2 Canadian provinces from western public utility commissions. The workshop will consist of state facility siting agencies, governors' energy agencies; and will address important issues relating to the Energy Policy Act of 1992, particularly Title VII. The objectives of the conference are:

a. Improve the understanding of the types of linkages (or lack of linkages) between utility-specific IRP, state facility siting, and regional transmission planning given (1) the current level of competition, (2) increased wholesale competition and (3) retail competition.

b. Identifying opportunities to enhance coordination of utility-specific IRP and state facility siting with regional transmission planning.

c. Improving the understanding of the influence of competition on utility-specific IRP in terms of planning objectives, planning processes, plan outputs and plan implementations, and identify potential changes to utility-specific IRP to allow IRP to meet planning objectives in a competitive environment.

Results of this workshop will assist the western utilities and consumers in the area by fostering utility cooperation. The proposed project will improve the understanding of the types of linkages between utility and specific IRP, state facility siting, and regional transmission planning, identify the opportunities to better coordinate utility specific IRP and improve the understanding of the effect of competition on utility-specific IRP and the changes in IRP required by a more competitive environment. Results will favorably impact the cost for producing and transmission of electricity, and the general public should gain with lower costs to electric utilities.

The DOE will provide funds in the amount of $25,000.00, and the Western Interstate Energy Board will provide $25,636.00 for the 7 months project period.

FOR FURTHER INFORMATION CONTACT: Charlotte Shedrick, PO–30, U.S. Department of Energy, 1000 Independence SW., Washington, DC 20585, (202) 586–3195.

Issued in Chicago, Illinois, on April 22, 1994.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–11426 Filed 5–10–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4883–3]

Campo Band of Mission Indians; Tentative Adequacy Determination of Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of the Campo Band of Mission Indians for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate permit programs for MSWLFs. EPA believes that adequate authority exists under RCRA to allow Tribes to seek an adequacy determination for purposes of sections 4005 and 4010.

Under separate authority of the Clean Air Act, EPA is reviewing an application for a non-attainment area permit to construct a proposed MSWLF on the Campo Reservation. There will be a separate public comment period and decision on that application.

The Campo Band of Mission Indians ("Campo Band") applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed the Campo Band's MSWLF application and has made a tentative determination of adequacy for those portions of the Campo Band's MSWLF permit program that are adequate to assure compliance with the revised MSWLF Criteria. These portions are described later in this notice. The Campo Band has drafted revisions to the remainder of its permit program to assure complete compliance with the revised MSWLF Criteria and gain full approval. EPA has determined that the Campo Band's revised requirements and emergency regulations, if fully adopted and affirmed before EPA makes a final determination, would be adequate to ensure compliance with the Federal Criteria.

Although RCRA does not require EPA to hold a public hearing on any determination to approve a Tribe's MSWLF program, the Region has scheduled a public hearing on this tentative determination. Details appear below in the **DATES** section. The Campo Band's application for program adequacy determination is available for public review and comment.

DATES: All comments on the Campo Band's application for a determination of adequacy must be received by the close of business on July 14, 1994. A public hearing is scheduled for 7 p.m. to 9 p.m. June 30, 1994 in Alpine, California. An open house is scheduled for 3 p.m. to 6 p.m. on June 30, 1994 in Alpine to give the public an opportunity to discuss the tentative approval before the hearing. At the hearing, EPA may limit oral testimony to five minutes per speaker, depending on the number of commenters. Commenters presenting oral testimony must also submit their comments in writing at the hearing on June 30, 1994. The hearing may adjourn earlier than 9 p.m. if all of the speakers deliver their comments before that hour. Representatives of the Campo Band of Mission Indians will be present at the open house and the public hearing held by EPA on this subject.

ADDRESSES: Written comments should be sent to Ms. Christiane Camp, Mail Code H–3–1, US EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

The public hearing will be held at the Alpine Elementary School Auditorium, 1850 Alpine Blvd., Alpine, California 91901. The open house will be held at the Alpine Elementary School Auditorium. Copies of the Campo Band's application for adequacy determination are available at the following addresses for inspection and copying: Campo Environmental Protection Agency, Campo Tribal Hall, BIA Route 10, Highway 94, Campo, California, 91906, telephone (619) 478–9369, from 9 a.m. to 4 p.m. Mondays through Fridays; Campo Public Library, 31466 Highway 94, Campo, California, 91906, telephone (619) 478–5945, from 9 a.m. to 1 p.m. and 1:30 to 4 Wednesdays, and 9 a.m. to 1 p.m. Fridays and Saturdays; US EPA Region 9 Library, 75 Hawthorne Street, 13th Floor, San Francisco, California, 94105, telephone (415) 744–1510, from 9 a.m. to 5 p.m. Mondays through Fridays.

FOR FURTHER INFORMATION CONTACT: US EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attn: Ms. Christiane Camp, Mail Code H–3–1, telephone (415) 744–2097.

SUPPLEMENTARY INFORMATION:

A. Background

1. Solid Waste Permit Program Criteria

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6941–6949(a), requires States (and, as discussed below, allows Indian Tribes) to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe must also provide for public participation in permit issuance and enforcement as required in section 7004(b)(1) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA is further requesting Tribes to provide a statement of legal authority from the Tribal Attorney General or its equivalent demonstrating that the Tribe has adequate jurisdiction to regulate the MSWLFs on the reservation. In addition, EPA is requesting a Tribe seeking program approval to demonstrate that it: (1) Is federally recognized; (2) has a government exercising substantial duties and powers; and (3) is capable of administering a permit program. If the Tribe has already demonstrated to EPA that it meets the first two of these criteria in the context of the approval to operate another EPA program, it need not do so again.

EPA is also requesting Tribes to provide an explanation of the jurisdiction and responsibilities of all Tribal program implementing agencies (including any State agency acting pursuant to an agreement with the Tribe) and designation of a lead agency to facilitate communications between EPA and the Tribe. These requests reflect the criteria used in other environmental statutes to assess whether Tribes may apply for program approval. If a Tribe has already provided information and/or a legal statement on the Tribe's jurisdiction and capability to operate another EPA program, EPA requests the Tribe to provide only those additional material necessary to support its application for MSWLF permit program approval.

EPA Regions will determine whether a Tribe has submitted an adequate program based on the interpretation outlined above. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule.

2. Tribal Programs

EPA is extending to Tribes the same opportunity to apply for permit program approval as is available to States. Providing Tribes with the opportunity to apply for adequacy for purposes of adopting and implementing MSWLF permit programs is consistent with EPA's Indian Policy. This Policy, formally adopted in 1984, recognizes Tribes as the primary sovereign entities for regulating the reservation environment and commits the Agency to working with Tribes on a "government-to-government" basis to effectuate that recognition. A major goal of EPA's Indian Policy is to eliminate all statutory and regulatory barriers to Tribal assumption of Federal environmental programs. Today's tentative determination to approve a Tribal MSWLF permit program represents another facet of the Agency's continuing commitment to the implementation of this long-standing policy.

EPA's interpretation of RCRA is governed by the principles of *Chevron, USA* v. *NRDC*, 467 U.S. 837 (1984). Where Congress has not explicitly stated its intent in adopting a statutory provision, the Agency charged with implementing that statute may adopt any interpretation which, in the Agency's expert judgment, is reasonable in light of the goals and purposes of the statute as a whole. *Id.* at 844. Interpreting RCRA to allow Tribes to apply for an adequacy determination satisfies the Chevron test.

States generally are precluded from enforcing their civil regulatory programs on Tribal lands, absent an explicit Congressional authorization or State-Tribal agreement to do so. *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 216 and n.18 (1987). Yet, under the current statutory scheme, EPA generally is precluded from enforcing the MSWLF criteria as well. Furthermore, Congress has not yet created an explicit role for Tribes to implement the Subtitle D program, as it has done under most other major environmental statutes amended since 1986 (Safe Drinking Water Act, Comprehensive Environmental Response Compensation and Liability Act, Clean Water Act, Clean Air Act).

RCRA does not explicitly define a role for Tribes under sections 4005 and 4010 and reflects an undeniable ambiguity in Congressional intent. Indeed, the only mention of Tribes anywhere in RCRA is in section 1004(13), a part of the definitions of key terms in RCRA. Section 1004(13) defines the term "municipality" to mean;

> a city, town, borough, county, parish, district or other public body created by or pursuant to State law, with responsibility for the planning or administration or solid waste management, *or any Indian tribe or authorized tribal organization or Alaska Native village or organization[.]*

Id. (emphasis added). The term "municipality", in turn, is used in sections 4008(a)(2) and 4009(a) of RCRA with reference to the availability of certain Federal funds and technical assistance for solid waste planning and management activities by municipalities. Thus, Congress apparently intended to make explicit that Tribes could receive funds and assistance when available in the same manner as municipal governments. However, Congress did not explicitly

recognize any other role for Tribes under other provisions. There is no accompanying legislative history which explains why Tribes were included in section 1004(13) and nowhere else.

EPA does not believe that Congress, by including Tribes in section 1004(13), intended to prohibit EPA from allowing Tribes to apply for an adequacy determination under subtitle D. First of all, it is clear that Tribes are not "municipalities" in the traditional sense. Tribes are not "public bodies created by or pursuant to State law." Indeed, Tribes are not subject to State law except in very limited circumstances. *Cabazon, supra.* Indian Tribes are sovereign governments whose authority is subject only to Congressional approval. *Worcester* v. *Georgia,* 31 U.S. (10 Pet.) 515 (1832). There is no indication in the legislative history that Congress intended to abrogate any sovereign Tribal authority by defining them as "municipalities" under RCRA, i.e., that Congress intended section 1004(13) to subject Tribes to State law for RCRA purposes. Moreover, it is a well-established principle of statutory construction that Federal statutes which might arguably abridge Tribal powers of self-government must be construed narrowly in favor of retaining Tribal rights. F. Cohen, Handbook of Federal Indian Law, 224 (1981); See, *e.g., Ramah Navajo School Board* v. *Bureau of Revenue,* 458 U.S. 832, 846 (1982).

EPA believes that inclusion of Indian Tribes in section 1004(13) was a definitional expedient, to avoid having to include the phrase "and Indian tribes or tribal organizations or Alaska Native villages or organizations" wherever the term "municipality" appeared, not to change the sovereign status of Tribes for RCRA purposes. Second, given the limited number of times the term "municipality" appears in RCRA, it does not appear that Congress intended to define an all-inclusive role for Tribes for all potential statutory purposes.

The ambiguity in RCRA regarding Indian Tribes also is evident from the structure of the 1984 Amendments. As mentioned earlier, Congress expressed a strong preference for a State lead in ensuring compliance with 40 CFR part 258, in that Section 4005(c) allows EPA to enforce the criteria only after a finding of inadequacy of the State permit program. Yet, the legislative history of the 1984 Amendments does not suggest that Congress intended to authorize States to implement such programs on Tribal lands or that Congress intended to override the general legal principle that States generally are precluded from such implementation. *Cf. Washington Dept. of Ecology* v. *EPA,* 752 F.2d 1465 (9th Cir. 1985) (RCRA Subtitle C does not constitute an explicit delegation of authority to States to implement hazardous waste programs on Indian lands); *accord, Nance* v. *EPA* [1], 645 F.2d 701 (9th Cir. 1981). Thus, Congress has otherwise put States in a primary role for the MSWLF program, yet on Indian lands has failed to define how Tribes participate where States lack authority. EPA believes it necessary to harmonize the conflicts and resolve the ambiguities created by these provisions.

EPA concludes that interpreting Sections 4005, 4008, and 4010 to allow Indian Tribes to seek an adequacy determination is reasonable. Several factors enter into this determination. First, as discussed in the previous paragraph, this approach is consistent with subtitle D because it preserves Congressional intent to limit the Federal government's role in MSWLF programs. Absent the opportunity to seek a determination of adequacy, there would be few or no adequate permit programs in place on Indian lands (because the State lacked the authority and the Tribe could not apply for program approval), potentially resulting in the Federal government assuming a substantial role in MSWLF programs by having EPA enforce 40 CFR part 258 directly.

In addition to expanding the Federal role, failure to approve Tribal programs would deny Tribes the option available to approved States of granting their MSWLF owners and operators flexibility in meeting the requirements of 40 CFR part 258. The revised Federal criteria (40 CFR part 258) would be implemented without benefit of an EPA approved permit process. All MSWLFs on Indian Lands, whether Tribal or private, would be in a disadvantaged position relative to other MSWLFs, being unable to take advantage of the flexibility that Congress built into Sections 4005 and 4010 and that EPA has incorporated into 40 CFR part 258. By approving Tribal permit programs, however, MSWLFs on Indian Lands would be under the jurisdiction of the closest sovereign with sufficient permitting authority, *i.e.* the Tribe.

EPA, in accordance with its Indian Policy, has worked to ensure that Congress revises other environmental statutes (*e.g.*, the Clean Water Act), at the earliest opportunity to define explicitly the role for Tribes under these programs. Yet, EPA also has stepped in on at least two occasions to allow Tribes to seek program approval despite the lack of an explicit Congressional mandate. Most recently, EPA recognized Indian Tribes as the appropriate authority under the Emergency Planning and Community Right-to-Know Act (EPCRA), despite silence on the Tribal role under EPCRA. 55 FR 30632 (1990). EPA reasoned that since EPCRA has no federal role to backup State planning activities, failure to recognize Tribes as the authority under EPCRA would leave gaps in emergency planning on Indian lands. 54 FR 13000–130001 (1989).

EPA filled such a statutory gap much earlier as well, even before development of its formal Indian Policy. In 1974, EPA promulgated regulations which authorized Indian Tribes to redesignate the level of air quality applicable to Indian lands under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act in the same manner that States could redesignate for other lands. See *Nance* v. *EPA,* 645 F.2d 701 (9th Cir. 1981) (upholding regulations). EPA promulgated this regulation despite the fact that the Clean Air Act at that time made no reference whatsoever to Indian Tribes or their status under the Act.[2]

One Court already has recognized the reasonableness of EPA's actions in filling such regulatory gaps on Indian lands. In *Nance, supra,* the U.S. Court of Appeals for the Ninth Circuit affirmed EPA's PSD redesignation regulations described in the previous paragraph. The Court found that EPA could reasonably interpret the Clean Air Act to allow for Tribal redesignation, rather than allowing the States to exercise that authority or exempting Indian lands from the redesignation process. *Id.* at 713. The Court noted that EPA's rule was reasonable in light of the general existence of Tribal sovereignty over activities on Indian lands. *Id.* at 714.

Today's tentative determination to approve a tribal MSWLF permit program is analogous to the rule upheld in *Nance.* EPA is proposing to fill a gap in jurisdiction on Indian lands. As with the redesignation program, without recognition of Tribal MSWLF programs, there would be no acceptable way to implement at the Federal level a key

[1] By today's action EPA does not intend to prohibit a State from applying for approval of its MSWLF program extending to Indian lands. However, the State would either have to enter into an agreement with a Tribe or show the existence of specific Congressional authorization or independent civil regulatory authority to regulate these landfills. See, e.g., 53 FR 43080 (1988) (Washington application to regulate UIC wells on Indian lands).

[2] Congress ratified EPA's regulation in 1977 by explicitly authorizing Tribes to make PSD redesignations; the 1990 Amendments to the Clean Air Act authorize EPA to allow Tribes to apply for approval to implement any programs EPA deems appropriate.

statutory provision, i.e., the MSWLF permitting process.

Furthermore, the case law supporting EPA's interpretation is even stronger today than at the time of the *Nance* decision. First, the Supreme Court reaffirmed EPA's authority to develop reasonable controlling interpretations of environmental statutes. *Chevron, supra.* Second, the Supreme Court has emphasized since *Nance* that Indian Tribes may regulate activities on land belonging to the Tribe or held by the United States in trust for the Tribe. *Montana* v. *United States*, 450 U.S. 544, 557 (1981). All land within the Campo Reservation is tribal trust land.

In the case of MSWLFs, EPA believes that improperly maintained MSWLFs would not be protective of human health (including that of Tribal members) and the environment (including Indian lands). Tribes are likely to be able to assert regulatory authority over landfills on tribal lands to protect these interests. Allowing Tribes to seek adequacy would reflect general principles of Federal Indian law. Thus, as in *Nance*, EPA believes that allowing Tribes to apply for program approval reflects the sovereign authority of Tribes under Federal law.

To have its MSWLF permit program deemed adequate by EPA, a tribe must have adequate authority over the regulated activities. Indian reservations include lands owned in fee by non-Indians. The extent of Tribal authority to regulate activities by non-Indians on such land has been the subject of considerable recent discussion. The test for civil regulatory authority over nonmember lands within Indian reservations was stated in *Montana* v. *U.S.*, 450 U.S. 544, 565–66 (1981) (citations omitted):

> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate * * * the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. * * * A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

In *Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989), the Court applied this test. Both the State of Washington and the Yakima Nation asserted authority to zone non-Indian real estate developments on two parcels within the Yakima reservation, one in an area that was primarily Tribal, the other in an area where much of the land was owned in fee by nonmembers. Although the Court analyzed the issues and the appropriate interpretation of *Montana* at considerable length, the nine members split 4:2:3 in reaching the decision that the Tribe should have exclusive zoning authority over property in the Tribal area and the State should have exclusive zoning authority over non-Indian owned property in the fee area.

Specifically, the Court recognized Tribal authority over activities that would threaten the health and welfare of the Tribe, 492 U.S. at 443–444 (Stevens, J., writing for the Court); *id.* at 449–450 (Blackmun, J. concurring). Conversely, the Court found no Tribal jurisdiction where the proposed activities "would not threaten the Tribe's * * * health and welfare." *Id.* at 432 (White, J., writing for the Court). Given the lack of a majority rationale, the primary significance of *Brendale* is in its result, which was fully consistent with *Montana* v. *United States.*

In evaluating whether a Tribe has authority to regulate a particular activity on land owned in fee by nonmembers but located within a reservation, EPA will examine the Tribe's authority in light of the evolving case law as reflected in *Montana* and *Brendale* and applicable Federal law. The extent of such Tribal authority depends on the effect of that activity on the Tribe. As discussed above, in the absence of a contrary statutory policy, a Tribe may regulate the activities of non-Indians on fee lands within its reservation when those activities threaten or have a direct effect on the political integrity, the economic security, or the health or welfare of the Tribe. *Montana*, 450 U.S. at 565–66. For further discussion of this issue see 56 FR 64876.

However, in *Brendale* several justices argued that for a Tribe to have "a protectable interest" in an activity, the activity's effect should be "demonstrably serious * * *." *Brendale*, 492 U.S. at 431 (White, J.). In addition, in a more recent case involving Tribal criminal jurisdiction, a majority of the Court indicated in *dicta* that a Tribe may exercise civil authority "where the exercise of tribal authority is vital to the maintenance of tribal integrity and self-determination." *Duro* v. *Reina*, 110 S.Ct. 2053, 2061 (1990). *See also Brendale*, 492 U.S. at 450 (Blackmun, J.) (test for inherent Tribal authority whether activities "implicate a significant tribal interest"); *id.* at 462 (Blackmun, J.) (test for inherent Tribal authority whether exercise of authority "fundamental to the political and economic security of the tribe * * *").

As discussed above, the Supreme Court, in recent cases, has explored several options to assure that the impacts upon Tribes of the activities of non-Indians on fee land, under the *Montana* test, are more than *de minimis*, although to date the Court has not agreed, in a case on point, on any one reformulation of the test. In response to this uncertainty, the Agency will apply, as an interim operating principle, a formulation of the standard that will require a showing that the potential impacts of regulated activities of non-members on the Tribe are serious and substantial.

The choice of an Agency operating principle containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of this standard *per se*. Moreover, as discussed below, the Agency believes that the activities regulated under the various environmental statutes generally have serious and substantial impacts on human health and welfare. As a result, the Agency believes that Tribes usually will be able to meet the Agency's operating principle, and that use of such a test by the Agency should not create an improper burden of proof on Tribes or create the administratively undesirable result of checkerboarding reservations.

Whether a Tribe has jurisdiction over activities by nonmembers will be determined case-by-case, based on factual findings. The determination as to whether the required effect is present in a particular case depends on the circumstances. Nonetheless, the Agency also may take into account the provisions of environmental statutes and any legislative findings that the effects of the activity are serious in making a generalized finding that Tribes are likely to possess sufficient inherent authority to control reservation environmental quality. See, *e.g.*, *Keystone Bituminous Coal Ass'n* v. *DeBenedictis*, 480 U.S. 470, 476–77 and nn.6, 7 (1987). As a result, in making the required factual findings as to the impact of a solid waste activity on a particular Tribe, it may not be necessary to develop an extensive and detailed record in each case. The Agency also may rely on its special expertise and practical experience regarding the importance of solid waste management.

The Agency believes that Congressional enactment of RCRA establishes a strong Federal interest in effective management of solid waste. EPA also notes that, where solid waste affects ground water which has

pathways that allow it to migrate readily, it would be practically very difficult to separate out the effects of solid waste disposal on non-Indian fee land within a reservation from those on Tribal portions. In other words, any environmental impairment that occurs on, or as a result of, activities on non-Indian fee lands is very likely to impair Tribal lands. This also suggests that the serious and substantial effects of solid waste within the non-Indian portions of a reservation are very likely to affect Tribal health and welfare. EPA believes that a "checkerboard" system of regulation, whereby the Tribe and State split up regulation of solid waste on the Indian Lands, would exacerbate the difficulties of assuring compliance with RCRA requirements.

The Agency also believes that the effects on Tribal health and welfare necessary to support Tribal regulation of non-Indian activities on Indian Lands may be easier to establish in the context of environmental regulation than with regard to zoning, which was at issue in *Brendale*. There is a significant distinction between land use planning and environmental regulation of solid waste under RCRA. The Supreme Court has explicitly recognized such a distinction: "Land use planning in essence chooses particular uses for the land; environmental regulation does not mandate particular uses of the land but requires only that, however the land is used, damage to the environment is kept within prescribed limits." *California Coastal Comm'n* v. *Granite Rock Co.*, 480 U.S. 572, 587 (1987). The Court has relied on this distinction to support a finding that States retain authority to carry out environmental regulation even in cases where their ability to carry out general land use regulation is preempted by federal law. *Id.* at 587–89.

Further, management of solid waste serves the purpose of protecting public health and safety, which is a core governmental function, whose exercise is critical to self-government. The special status of governmental actions to protect public health and safety is well established.[3] By contrast, the power to zone can be exercised to achieve purposes which have little or no direct nexus to public health and safety. See, e.g., *Brendale*, 492 U.S. at 420 n.5 (White, J.) (listing broad range of consequences of state zoning decision). Moreover, solid waste may affect ground water, which is mobile, freely migrating from one local jurisdiction to another, sometimes over large distances. By contrast, zoning regulates the uses of particular properties with impacts that are much more likely to be contained within a given local jurisdiction.

Operationally, EPA's generalized findings regarding the relationship of solid waste management to Tribal health and welfare will affect the legal analysis of a Tribal submission by, in effect, supplementing the factual showing a Tribe makes in applying for program approval. Thus, a Tribal submission regarding jurisdiction on fee lands will need to make a relatively simple showing of facts that there is or may be solid waste within the meaning of Subtitle D on the reservation and that the Tribe or Tribal members could be subject to exposure to that waste. The Tribe also must explicitly assert that activities of non-Indians regarding that waste would have a serious and substantial effect on the health and welfare of the Tribe. Once the Tribe meets this initial burden, EPA will, in light of the facts presented by the Tribe and the generalized statutory and factual findings regarding the importance of solid waste discussed above, presume that there has been an adequate showing of Tribal jurisdiction on fee lands, unless an appropriate governmental entity (e.g., an adjacent Tribe or State) demonstrates a lack of jurisdiction on the part of the Tribe.

The Agency recognizes that jurisdictional disputes between Tribes and States can be complex and difficult. However, EPA's ultimate responsibility is protection of the environment. In view of the mobility of environmental problems, and the interdependence of various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection.

For purposes of this determination, Tribe is defined to mean any Indian tribe, band, nation, or other organized group or community which is recognized by the Secretary of the Interior or Congress and which exercises substantial governmental duties and powers over any area. While the definition of Tribes in today's determination does not explicitly include Alaska Native Villages, EPA has not determined that such entities are ineligible to apply for permit program approval. Alaska Native entities (e.g., villages) may apply for permit program approval. Alaska Native Villages that demonstrate that their permit programs meet the requirements of today's proposal will be deemed adequate.

B. Campo Band of Mission Indians

On February 15, 1994, the Campo Band submitted an application for adequacy determination. EPA reviewed the Campo Band's application and tentatively determined that the following portions of the Tribe's Subtitle D program will ensure compliance with the revised Federal Criteria:

1. General criteria governing scope and applicability, definitions, and consideration of other federal laws (40 CFR 258.1, 258.2, 258.3);
2. Location restrictions for airport safety, floodplains, wetlands, fault areas, seismic impact zones, unstable areas, and closure of existing units (40 CFR 258.10, 258.11, 258.12, 258.13, 258.14, 258.15, and 258.16);
3. Operating criteria for exclusion of hazardous waste, cover material requirements, disease vector control, explosive gases control, air criteria, access requirements, run-on/run-off control systems, surface water requirements, liquids restrictions, and recordkeeping requirements (40 CFR 258.20, 258.21, 258.22, 258.23, 258.24, 258.25, 258.26, 258.27, 258.28, and 258.29);
4. Design criteria (40 CFR 258.40);
5. Groundwater monitoring and corrective action criteria governing applicability (40 CFR 258.50);
6. Closure and post-closure care requirements (40 CFR 258.60 and 258.61);
7. Financial assurance criteria governing applicability and effective date, and allowable mechanisms (40 CFR 258.70 and 258.74).

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes, codes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribes would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

The Campo Band needs to revise aspects of its permit program to ensure compliance with the following provisions of the Federal Criteria:

1. Groundwater monitoring and corrective action criteria for

[3] This special status has been reaffirmed by all nine justices in the context of Fifth Amendment takings law. See *Keystone Bituminous Coal Ass'n* v. *DeBenedictis*, 480 U.S. 470, 491 n. 20 (1987); *id.* at 512 (Rehnquist, C.J., dissenting).

groundwater monitoring systems, sampling and analysis requirements, detection monitoring program, assessment monitoring program, and corrective action implementation (40 CFR 258.51, 258.53, 258.54, 258.55, and 258.58). Although existing CEPA regulations ensure compliance with the federal assessment of corrective measures and selection of remedy requirements (40 CFR 258.56 and 258.57) in and of themselves, it would be impossible to separate compliance with these portions of CEPA's regulations from the rest of CEPA's groundwater monitoring program. Therefore, if CEPA does not fully adopt draft regulatory changes to the groundwater monitoring systems, sampling and analysis requirements, detection monitoring program, assessment monitoring program, and corrective action implementation requirements, EPA cannot approve CEPA for the assessment of corrective measures and selection of remedy portions of its program.

2. Financial assurance criteria for closure, post-closure and corrective action (40 CFR 258.71, 258.72, and 258.73).

The Campo Band submitted an amendment to its application for program adequacy determination on April 18, 1994. The Campo Band's amendment included draft revised requirements for those parts of the Campo Band's existing program that are not adequate to ensure compliance with the federal criteria. EPA Region 9 reviewed the Campo Band's amendment to its application and determined that these draft regulatory requirements would be adequate to ensure compliance with the Federal Criteria.

If the draft regulatory requirements submitted to EPA on April 18, 1994 are fully adopted before EPA makes a final determination, then EPA proposes to fully approve the Campo Band's MSWLF program. If all the necessary draft regulatory requirements are not adopted with the relevant effective dates or are adopted with altered language that would not clearly assure compliance with the Federal Criteria, then EPA proposes to partially approve the Campo Band's program. Partial approval would only be for those portions of the Campo Band program that assure compliance with the Federal Criteria.

In addition, before EPA grants partial or full program approval, the Campo Band must reaffirm the February 13, 1994 promulgation of the emergency regulations submitted with the Campo Band's February 15, 1994 final application. Although the Campo Band's emergency regulations are currently in effect, they remain in effect only 180 days after February 13, 1994 unless the original promulgation is affirmed. The emergency regulations must be affirmed without altered language that would not clearly assure compliance with the Federal Criteria in order for EPA to approve those portions of the Campo Band program governed by the emergency regulations.

The Campo Band has demonstrated that the Campo Band of Mission Indians is a Federally recognized Tribe. See 53 FR 52830 (December 29, 1988). The Constitution (the "Constitution") of the Campo Band of Mission Indians establishes a General Council that serves as the Campo Band's governing body and enumerates the Council's powers and responsibilities. Among the enumerated powers, the Constitution authorizes the General Council to establish subordinate entities for the Band and, by appropriate ordinances and resolutions, to delegate to such subordinate entities any of the powers and duties of the General Council. Pursuant to this power under the Constitution and by Resolution No. 88–005, the General Council established the Campo Environmental Protection Agency (CEPA) for the purpose of protecting public health and safety and the environment. CEPA is charged with the administration and enforcement of the solid waste management permitting and regulatory compliance programs.

All land within the Campo Reservation is tribal trust land. The Campo Band has established that the Campo Band of Mission Indians has adequate jurisdiction over the land of the Campo Reservation based on general principles of Tribal sovereignty, the Band's status as a "federally recognized Indian Tribe," the Tribal Constitution, a map and narrative description which established the boundaries of the Reservation and copies of Tribal codes and regulations.

In making today's tentative determination that the Campo Band's MSWLF permit program is adequate, the Agency has tentatively determined that the Tribe has adequate authority over the activities regulated by such a program. In its application, the Campo Band has also demonstrated that it has adequate resources to manage a MSWLF permit program and adequate authority to issue permits, ensure compliance monitoring and enforcement, and to provide for intervention in civil enforcement proceedings.

Region 9 will hold a public hearing on this determination from 7 p.m. to 9 p.m. June 30, 1994 at the Alpine Elementary School Auditorium, 1850 Alpine Blvd., Alpine, California, 91901. An open house is scheduled for 3 p.m. to 6 p.m. on June 30, 1994 at the Alpine Elementary School Auditorium to give the public an opportunity to discuss the tentative approval before the hearing. The public may submit written comments on EPA's tentative determination until the close of the public comment period July 14, 1994. Copies of the Campo Band's application and supporting documents are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination received during the public comment period and public hearing. Issues raised by those comments may be the basis for a determination of adequacy or inadequacy for the Campo Band's program. EPA will make a final determination on whether or not to approve the Campo Band's program and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that approval of the Tribal MSWLF permit program will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority

This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act

as amended; 42 U.S.C. 6912, 6945, 6949a(c).

Dated: April 29, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94-11085 Filed 5-10-94; 8:45 am]

BILLING CODE 6560-50-P

[PP 2G4157/T658; FRL 4777-4]

Entomopathogen; Extension of an Exemption from Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended the temporary exemption from the requirement of a tolerance for residues of the insecticide fungal entomopathogen *Beauvaria bassiana*, Naturalis-L strain, and has broadened the tolerance to include residues in or on all raw agricultural commodities.

DATES: This temporary exemption from the requirement of a tolerance expires January 18, 1995.

FOR FURTHER INFORMATION CONTACT: By mail, Phil 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: EPA issued a notice that was published in the **Federal Register** of August 4, 1993 (58 FR 41473) that a temporary exemption from the requirement of a tolerance had been amended for residues of the insecticide fungal entomopathogen *Beauvaria bassiana*, Naturalis-L strain in or on the following raw agricultural commodities: cotton seed; peanuts; peanut forage; peanut hay; tomatoes; lettuce; cantaloupe; cabbage and peppers for the control of boll weevil, whiteflies and leafhoppers. This exemption from the requirement of a tolerance has been estended in response to pesticide petition (PP) 2G4157, submitted by Fermone Corporation, Incorporated, 2620 No. 37th Drive, Phoenix, AZ 85009.

The company has requested an expansion to include all raw agricultural crops and a 1-year extension of the temporary tolerance to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 53871-EUP-1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been extended and expanded on the condition that the pesticides be used in accordance with approved experimental use permits and with the following provisions:

1. The total amount of the active ingredients to be used must not exceed the quantity authorized by approved experimental use permits.

2. Fermone Corporation must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires January 18, 1995. Residues remaining in or on all the raw agricultural commodities after this expiration date will not be considered actionable if the pesticides are legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement 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 exemption 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).

Authority: 21 U.S.C. 346a(j).

List of Subjects

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

Dated: April 27, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-11273 Filed 5-10-94; 8:45 am]

BILLING CODE 6560-50-F

[PF-596; FRL-4775-1]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

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. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a 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. All written comments will be 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: Registration Division (7505C), Office Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
Dennis H. Edwards, Jr. (PM-19).	Rm. 207, CM #2, 703-305-6386.	1921 Jefferson Davis Hwy., Arlington, VA.
Steve Robbins (PM-21).	Rm. 233, CM #2, 703-305-6900.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food/feed additive (FAP) petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 3E4218*. Makhteshim-Agan of North America, Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176, proposes to amend 40 CFR 185.410 to permit residues of 1,1-*bis*(*p*-chlorophenyl)-2,2,2-trichloroethanol in or on the commodities tea (plucked) and tea (dried) at 45 parts per million. (PM-19)

2. *PP 3F4242*. Ecogen, Inc., 2005 Cabot Blvd., West, Langhorne, PA 19047, requests amendments to 40 CFR 180.1001(c) and (d) to establish exemptions from the requirement of a tolerance for *Ampelomyces quisqualis* (AQ-10) in/on all raw agricultural commodities. (PM-21)

3. *PP 4F4284*. Gustafson, Inc., P.O. Box 660065, Dallas, TX, 75266-0065, requests amending 40 CFR part 180 to establish an exemption from the requirement of a tolerance for *Bacillus subtilis* MBI 600 (ATCC No. SD-1414) in/on raw agricultural commodities when used as a seed treatment. (PM-21)

4. *PP 4F4328*. EcoScience Corp., One Innovation Drive, Worcester, MA 01545, requests amending 40 CFR part 180 to establish an exemption from the requirement of a tolerance for Bio-Save 10 containing active ingredient (*Pseudomonas syringae*) in/on pears, apples, lemons, oranges, and grapefruit for postharvest applications. (PM-21)

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: April 27, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-11272 Filed 5-10-94; 8:45 am]

BILLING CODE 6560-50-F

[PF-697; FRL-4777-7]

Monsanto Co.; Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of pesticide petition (PP) 4E4301 by Monsanto Co. to amend 40 CFR 180.1001(d) by adding Neomycin Phosphotransferase II (NPTII) as an inert ingredient byproduct of the nptII gene when used as a plant pesticide formulation inert ingredient.

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. 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: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. In person, contact Phil Hutton (PM-18), rm. 313, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

SUPPLEMENTARY INFORMATION: EPA has received the initial filing of PP 4E4301 from the Monsanto Co., 700 Chesterfield Parkway North, St. Louis, MO 63193, proposing that 40 CFR part 180 be amended to establish a tolerance exemption for residues of the plant pesticide inert ingredient Neomycin Phosphotransferase II when used as a plant pesticide formulation inert ingredient, as expressed in plant cells. The inert ingredient is the byproduct of the nptII gene which has been genetically engineered to produce the enzyme neomycin phosphotransferase.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: April 27, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-11271 Filed 5-10-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1025-DR]

Illinois; 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 Illinois (FEMA-1025-DR), dated April 26, 1994, and related determinations.

EFFECTIVE DATE: May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 4, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94-11423 Filed 5-10-94; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; APL-TMM Space Charter Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011435–001.

Title: APL–TMM Space Charter Agreement.

Parties:

American President Lines, Ltd. ("APL")

Transportacion Maritima Mexicana, S.A. DE C.V. ("TMM")

Synopsis: The proposed amendment extends the scope of the Agreement to include (1) the carriage of U.S. commerce by APL aboard TMM vessels; and (2) adds a new Article 15—Undertaking with Respect to Stock Transactions.

Dated: May 5, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–11328 Filed 5–10–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2635	Hydra Management, Inc., 10500 Richmond, Suite 228, Houston, TX 77042	April 14, 1994.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–11361 Filed 5–10–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3674
Name: Kelly's Freight Forwarders, Inc.
Address: 1416 N.W. 82nd Ave., Miami, FL 33126
Date Revoked: March 17, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3376
Name: J.B. Daman (U.S.A.) Ltd.
Address: 2500 A Broening Highway, Ste. 203, Baltimore, MD 21224
Date Revoked: March 29, 1994
Reason: Surrendered license voluntarily.

License Number: 3192
Name: Dale M.A. Zerda
Address: 529 Commercial St., 4th Fl., San Francisco, CA 94111
Date Revoked: April 1, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 956
Name: Jay International, Inc.
Address: 1331 Rt. 130 South, Gloucester City, NJ 08030
Date Revoked: April 6, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1959
Name: Superior Service Freight Forwarding, Inc.
Address: 7812 N.W. 72nd Ave., Miami, FL 33152
Date Revoked: April 6, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3706
Name: Chesapeake Bay Shipping and Warehousing, Inc.
Address: 6715 Santa Barbara Court, Baltimore, MD 21227
Date Revoked: April 7, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3467
Name: Total Air & Ocean Services, Inc.
Address: 5086 N.W. 74th Ave., Miami, FL 33166
Date Revoked: April 14, 1994
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–11360 Filed 5–10–94; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 93–25]

Cancellation of Tariffs for Failure To Comply With Automated Tariff Filing and Information System ("ATFI") Filing Requirements (European Trade)

By Order published in the **Federal Register** (58 FR 69,365) on December 30, 1993 ("December Order"), the Commission directed 35 carriers with tariffs on file in the European trade areas to show cause why their paper tariffs should not be cancelled for failure to register and file a tariff in ATFI by the required data (*i.e.*, August 27, 1993). This action was taken pursuant to section 8 of the Shipping Act of 1984 (46 U.S.C. app. 1707), the Commission's regulations implementing ATFI at 46 CFR Part 514 and Supplemental Report Nos. 2, 3 and 4 issued in Docket No. 90–23, Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce (Automated Tariff Filing and Information System).[1]

Formal responses were filed on behalf of CarAmerica S.R.L. ("CarAmerica"), Hermann Ludwig GMBH & Co. ("Hermann Ludwig"), and Compania Trasatlantica Espanola, S.A. ("CTE"). CarAmerica requested that the Commission refrain from cancelling its paper tariff until its ATFI tariff becomes effective. Hermann Ludwig stated it was not serving the United States trade and was reorganizing the company. It requested the Commission to refrain from cancelling its paper tariff since it intended to register and file a tariff in ATFI under its new name. CTE requested that the Commission cancel its tariffs since it no longer serves the United States.

CarAmerica's ATFI Tariff No. 001 was filed and became effective on March 12, 1994, so this firm will be dismissed from the proceeding.

The Commission believes that Hermann Ludwig was given adequate notice of the AFTI filing time frames and therefore should not be granted any further extension. Moreover, as noted above, it is no longer serving the United States trades nor has it evidenced its intent to do so by registering to file an ATFI tariff under its new corporate

[1] Supplemental Report No. 2, served August 4, 1992, Supplemental Report No. 3 issued on December 17, 1992 (57 FR 59,999) and Supplemental Report No. 4 issued on June 3, 1993 (58 FR 31,522) advised the public that failure to convert tariffs to ATFI format by scheduled filing dates would subject the carrier's tariff to possible cancellation through a show cause proceeding.

Sec. 502(b)(1) of Public Law 102–582 ("Pub. L. 102–582") requires all tariffs and essential terms of service contracts filed with the Commission to be in electronic format.

name. Accordingly, its tariff will be cancelled.

CTE has not filed an ATFI tariff and moreover has asked that its tariff be cancelled. The Commission will grant CTE's request.

The Commission did not receive responses from 17 of the respondents. None of these respondents have registered in ATFI or filed an ATFI tariff. They will have their tariffs or portions of tariffs applicable to the European trade cancelled.

The 15 remaining carriers have filed their tariffs in ATFI or cancelled their paper tariffs, and will be dismissed from the proceeding, along with CarAmerica.

Therefore, *It is Ordered* that the tariffs or portions of tariffs currently on file with the Commission with European scope of the carriers identified in Appendix A to this Order be cancelled effective five days from publication of this Order in the Federal Register.

It is Further Ordered, That the parties listed in Appendix B to this order are dismissed from this proceeding.

By the Commission.

Joseph C. Polking,

Secretary.

Appendix A

Air-Mar Shipping, Inc.
American Contract Freight Line, Ltd.
Arrow-Service
Cargo America Corp.
Cargo Overseas Limited
CMB Transport NV
Compania Transatlantica Espanola, S.A.
Euro-Gulf International, Inc.
Hermann Ludwig GMBH & Co.
Intersped Systems Inc.
Irano Misr Shipping Co.
Maritime Consolidators Holland (MCH) B.V
Mineral Shipping (PTE.) Ltd.
Multimodal Shipping, Ltd.
Nordisk Transport and Spedition AB
Rotterdam Waterway
Sagatrans S.A[1]
Surinam Navigation Co.
Unsworth International Container Line

Appendix B

Bangladesh Shipping Corporation
Caramerica S.R.L.
Combimar & Agemar S.R.L.
DFDS Chelmer, Inc.
EOL (UK) Ltd.
Harbour-Link International Inc.
Henry Johnson Sons & Co., Ltd.
Lane Shipping Company
Maritima Euroship, S.A.
Maromar Inc.
Nichiro Corp.
Ralex International Corp.
Rokuchu Marine Corporation
Shenk, David W.
Van Ommeren Bulk Shipping BV
Webster Miller Freight Services Ltd.

[1] Sagatrans S.A. is changing the name on its tariffs to Saga (USA) Inc. Saga (USA) Inc. has registered for the ATFI system but at the time of this Order has not filed a tariff. The paper tariff remains in the name Sagatrans S.A.

[FR Doc. 94-11329 Filed 5-10-94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Alliance Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Alliance Bancorp, Inc., Marietta, Georgia; to acquire 80 percent of Interim Alliance Corporation D/B/A Alliance Finance, Smyrna, Georgia and thereby engage in consumer finance activities, pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 5, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11387 Filed 5-10-94; 8:45 am]

BILLING CODE 6210-01-F

Signet Banking Corporation, 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 Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Signet Banking Corporation, Richmond, Virginia; to engage *de novo* through its subsidiary, Signet Credit Card Bank, Richmond, Virginia in making, acquiring, or servicing loans or other extensions of credit for the company's account or the account of others, such as would be made by a credit card company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Northwest Bancorporation, Inc., Houston, Texas; to engage *de novo* in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 5, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11388 Filed 5-10-94; 8:45 am]

BILLING CODE 6210-01-F

Trans Financial Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 6, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to merge with FGC Holding Company, Martin, Kentucky, and thereby indirectly acquire First Guaranty National Bank, Martin, Kentucky.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Central Delaware Financial Bancorp, Inc., Dover, Delaware; to acquire 59.44 percent of the voting shares of Bank of Troy, Troy, Texas.

2. Central Financial Bancorp, Inc., Lorena, Texas; to acquire 59.44 percent of the voting shares of Bank of Troy, Troy, Texas.

Board of Governors of the Federal Reserve System, May 5, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-11386 Filed 5-10-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Administration on Aging

White House Conference on Aging; Program Announcement No. WHCoA 94–2; Availability of Funds and Request for Applications for Mini-conferences

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Announcement of availability of funds and request for applications to conduct mini-conferences in preparation for the 1995 White House Conference on Aging.

SUMMARY: the White House Conference on Aging (WHCoA) announces that it will hold a competition for the funding of mini-conferences in preparation for the 1995 White House Conference on Aging. Funding for WHCoA grants is authorized by the Older Americans Act, Public Law 102–375 and Public Law 103–171.

This program announcement consists of two parts. Part I provides background information and describes the program under which the WHCoA is inviting applications to be considered for funding. Part II describes, in detail, the application process and provides guidance on how to prepare and submit an application.

All of the forms necessary to submit an application are included following Part II. They complete the application kit that an applicant needs for preparing and for submitting an application under this announcement.

Grants will be made under this announcement subject to the availability of funds for the support of the program described herein.

DATES: The deadline date for the submission of applications is June 6, 1994.

ADDRESSES: Application receipt point: Department of Health and Human Services; Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, DC 20201, Attn: WHCoA–94–2.

FOR FURTHER INFORMATION CONTACT: For programmatic information, contact Judy Satine, Department of Health and Human Services, White House Conference on Aging, 501 School Street, SW., 8th Floor, Washington, DC 20024, telephone (202) 245–7826. For grant technical information, contact Margaret Tolson, AoA, see address above, telephone (202) 401–0838.

SUPPLEMENTARY INFORMATION:

Part I. Background Information and Program Description

A. Statutory Authority

The statutory authority for awards made under this Announcement is contained in the Older Americans Act as amended, Public Law 102–375 and Public Law 103–171.

B. Eligible Applicants

In general, any eligible public or nonprofit private organization, agency or institution is eligible to apply under this program announcement. Any applicant that is not now a DHHS grantee should include, with its application, Internal Revenue Service or other legally recognized documentation of its nonprofit status. A nonprofit applicant cannot be funded without proof of its status.

C. Program Description

President Clinton announced in February that he has formally called for a White House Conference on Aging to be convened in May 1995.

Previous White House Conferences in 1961, 1971 and 1981 adopted recommendations that resulted in local, state and Federal initiatives which improved the security and well being of older Americans. The 1995 Conference will produce recommendations that will meet the needs of Older Americans in the twenty-first century.

A White House Conference on Aging in intended to produce policy recommendations to guide national aging policy over the next decade. In Public Law 102–375, the Older Americans Act amendments of 1992, Congress specifically identified six

primary purposes for the Conference. They are:

(1) To increase public awareness of the interdependence of generations and the essential contributions of older individuals to society for the well-being of all generations;

(2) To identify the problems facing older individuals and the commonalities of the problems with problems of younger generations;

(3) To examine the well-being of older individuals including the impact the wellness of older individuals has on our aging society;

(4) To develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate for maintaining and improving the well-being of the aging;

(5) To develop recommendations for the coordination of Federal policy with State and local needs and the implementation of such recommendations; and

(6) To review the status and multigenerational value of recommendations adopted at previous White House Conferences on Aging.

Of major significance to the 1995 White House Conference on Aging in direct participation by individuals and organizations in the pre-conference stages. As part of this grass roots effort, the WHCoA has adopted a four pronged approach that includes local forums, mini-conferences as well as State and Regional conferences. The purpose of these events is to identify those issues of mutual concern to the aging population and to develop recommendations that warrant specific attention by the White House Conference of Aging. An integral part of this strategy is the conduct of mini-conferences which are topic or constituency specific. The recommendations from these conferences will play an integral role in the development of the agenda for the 1995 Conference.

In order for a mini-conference to be considered for funding, the proposed event must:

(1) Be a policy oriented event. The focus of the event must be either:

(a) On one of the following specific Federal policy issues:

Interdependence of generations;
Older persons as community resources;
Employment and continued productivity opportunities for middle-aged and older persons including training;
Home and community based long-term care services including caregivers assistance and health promotion;
Housing and coordinated services;
Income security with particular emphasis on alleviating poverty;
National retirement policy including pre-retirement;
Crime;
Nutrition;
Disability and aging services;
Mental health and substance abuse;
Future of aging services to be reflected in the Older Americans Act;
Combatting false stereotypes;
Minority aging;
Biomedical and other appropriate research; and
Related topics to promote the independence, well-being and security of older persons.

or

(b) On one of the following specific constituencies:

Older Women;
One of the following groups of minority elderly:
Native American
African American
Asian/Pacific Islanders
Hispanic
Elderly persons with disabilities.

(2) Should have substantial and significant input and participation by older persons. It should involve older persons and organizations representing older persons in the development and implementation of the event. Efforts should be made to seek out an appropriately diverse representation of interested parties.

(3) Provide at a maximum five recommendations that can be utilized by the WHCoA. These recommendations must be:

(a) Well articulated;

(b) Based on demonstrated information, knowledge and consensus reached at event;

(c) Have a reasonable prospect of being attainable within the current political, economic, and fiscal environment;

(d) Received within 30 days after the mini-conference.

The report should devote no more than 3 pages double spaced per recommendation for up to 5 recommendations (total maximum of 15 double spaced pages).

(4) Provide an implementation plan to demonstrate:

(a) How they will plan, design, and carry out the mini-conference including proposed date and location, proposed participants (audience discussants and speakers) and cooperating organizations;

(b) How they will seek additional sources of support;

(c) What they will do as an advocacy group to ensure that their recommendations, if adopted by the WHCoA, are implemented into public policy.

(5) Be held by March 31, 1995.

(6) Be held in a location accessible to persons with disabilities.

(7) Not be a profit-making or fund-raising event although it is permissible to charge a fee to recover the costs of the event.

Project Costs: It is expected that 12–15 projects at $6,000 each will be funded by the WHCoA. Applicants are expected to obtain additional funding from other sources and are encouraged to include with their applications letters of commitment from other funding sources.

Part II. Information and Guidelines for the Application Process and Review

Part II of this Announcement contains general information for potential applicants and basic guidelines for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal to the White House Conference on Aging. Specific eligibility guidelines were provided in the program description above.

A. General Information

1. Review Process and Considerations for Funding

The following steps are involved in the review process.

a. *Notification:* All applicants will automatically be notified of the receipt of their application and informed of the identification number assigned to it.

b. *Expert Review:* Applications that conform to the requirements of this program announcement will be reviewed and scored competitively against the evaluation criteria specified in section D, below. This independent review of applications is performed by panels consisting of qualified persons. The scores and judgments of these expert reviewers are a major factor in making award decisions.

c. *Decision-Making Process:* After the panel review session, applicants may be contacted by WHCoA staff to furnish additional information. Applicants who are contacted should not assume that funding is guaranteed. An award is official only upon receipt of the Financial Assistance Award (Form DGCM 3–785).

d. *Timeframe:* Applicants should be aware that the time interval between the deadline for submission of applications and the award of a grant may be several weeks in duration. This length of time

is required to review and process grant applications.

2. Notification Under Executive Order 12372

This is not a covered program under Executive Order 12372.

B. Deadline for Submission of Applications

The closing date for submission of applications is June 6, 1994. Applications must be either sent or hand-delivered to the address specified in Section C, below. Hand-delivered applications are accepted during the normal working hours of 9 a.m. to 5:30 p.m., Eastern Time, Monday through Friday. An application will meet the deadline if it is either:

1. Received at the mailing address on or before the applicable deadline date; or

2. Sent before midnight of the applicable deadline date as evidenced by either: (1) A U.S. Postal Service receipt or postmark or (2) a receipt from a commercial carrier. The application must also be received in time to be considered under the competitive independent review mandated by Chapter 1–62 of the DHHS Grants Administration Manual. Applicants are strongly advised to obtain proof that the application was sent by the applicable deadline date. If there is a question as to when an application was sent, applicants will be asked to provide proof that they have met the applicable deadline date. Private metered postmarks are not acceptable as proof of a timely submittal.

Applications which do not meet the above deadlines are considered late applications and will not be considered for funding.

C. Application Screening Requirements

All applications will be screened to determine completeness and conformity to the requirements of this announcement. These screening requirements are intended to assure a level playing field for all applicants. Applications which fail to meet one or more of the criteria described below will not be reviewed and will receive no further consideration for funding. Complete, conforming applications will be reviewed and scored competitively.

In order for an application to be reviewed, it must meet the following screening requirements:

1. The application must not exceed 10 pages, double-spaced, exclusive of certain required forms and assurances which are listed below. Applications whose typescript is single-spaced or space-and-a-half will be considered only if it is determined the applicant has not thereby gained a competitive advantage. The following documents are excluded from the 10 page limitation: (1) Standard Forms (SF) 424, 424A (including up to a four page budget justification) and 424B; (2) the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements; and (3) proof of non-profit status.

2. Applications submitted under this announcement must be either postmarked by midnight, June 6, 1994, or hand-delivered by 5:30 p.m., Eastern Time, on June 6, 1994 to the address provided below: Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, DC 20201, Attn: AoA–94–2.

3. Applicants must meet the specific eligibility requirements set forth above in the program description.

Under No Circumstances Will Applications That Do Not Meet These Screening Requirements Be Assigned To Reviewers

D. Evaluation Criteria

Applications which pass the screening will be evaluated by an independent review panel of at least three individuals. These reviewers will be primarily experts from within the Federal government. Based on the specific programmatic considerations set forth in the announcement, the reviewers will comment on and score the applications, focusing their comments and scoring decisions on the criteria below.

1. Purpose and Need for Assistance: 20 points

a. Does the proposed project clearly and adequately respond to the stated requirements for a mini-conference?

b. Does the proposed project address one of the listed topics/constituency groups in a relevant and thorough manner?

2. Approach/Method—Implementation and Activities: 30 points

a. Does the application clearly express and organize an implementation plan which systematically includes specific objectives and tasks which will result in an effective mini-conference?

b. Does the implementation plan include timelines for accomplishment of tasks and objectives? Is the sequence and timing of events logical and realistic?

c. Do the proposed presenters have demonstrated qualifications which are appropriate for their roles?

3. Anticipated Outcomes: 30 points

a. Does the proposal include a plan for advocacy which is likely to increase public awareness of the recommendations from the mini-conference? Is this advocacy plan adequate for communicating recommendations to all appropriate audiences? Does it provide a realistic plan to achieve implementation of the recommendations should they be adopted by the 1995 White Conference on Aging?

4. Level of Effort: 20 points

a. Are the qualifications of the key organizers of the mini-conference appropriate for their roles?

b. Does the organization have a track record which demonstrates its capability and knowledge to conduct the mini-conference?

E. The Components of an Application

To expedite the processing of applications, we request that you arrange the components of your application, the original and two copies, in the following order:

- SF 424, Application for Federal Assistance; SF 424A, Budget, accompanied by your budget justification; SF 424B (Assurances); and the certification forms regarding lobbying; debarment, suspension, and other responsibility matters; and drug-free workplace requirements.

Note: The original copy of the application *must* have an original signature in item 18d on the SF 424.

- Proof of nonprofit status, as necessary:
- Project summary description;
- Program narrative.

The original and each copy should be stapled securely (front and back if necessary) in the upper left corner. Pages should be numbered sequentially. In order to facilitate the handling and reproduction of the application for purposes of the review, please do not use covers, binders or tabs.

F. Communications With WHCoA

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified by mail of the receipt of their application and informed of the identification number assigned to it. This number should be referred to in all subsequent communication with WHCoA concerning the application.

After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number for quick retrieval. It will not be possible for WHCoA staff to provide a

timely response to inquiries about a specific application unless the identification number is given.

Applicants are advised that, prior to reaching a decision, the WHCoA will not release information relative to an application other than that it has been received and that it is being reviewed. Unnecessary inquiries delay the process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

G. Completing the Application

To assist applicants in completing Forms SF 424 and SF 424A correctly, samples of completed forms have been provided as part of this announcement. These samples are to be used as a guide only. Be sure to submit your application on the blank copies. Please prepare your application consistent with the following guidance:

1. *SF 424, Cover Page:* Complete only the items specified in the following instructions:

Item 1. Enter an "X" in the block marked Application—Non-construction.

Item 2. Fill in the date you submitted the application. Leave the applicant identifier box blank.

Item 3. Not applicable.

Item 4. Leave blank.

Item 5. Provide the legal name of applicant; the name of the primary organizational unit which will undertake the assistance activity; the applicant address; and the name and telephone number of the person to contact on matters related to this application.

Item 6. Enter the employer identification number (EIN) of the applicant organization as assigned by the Internal Revenue Service. Please include the suffix to the EIN, if known.

Item 7. Enter the appropriate letter in the box provided.

Item 8. Place an "X" in the box marked New.

Item 9. Enter the White House Conference on Aging.

Item 10. Leave blank.

Item 11. The title should describe concisely the nature of the project. Try not to exceed 10 to 12 words and 120 characters including spaces and punctuation.

Item 12. Not applicable.

Item 13. Enter the desired start date for the project and the desired end date for the project. The project must be completed by March 31, 1995.

Item 14. List the applicant's Congressional District and the District(s), if any, directly affected by the proposed project.

Item 15. Enter the funding request to the WHCoA under Item 15a, Federal. Enter the applicant's share of the project costs under 15b, Applicant. If there are third party contributions, enter those under Item 15e, Other. Enter the sum of these amounts under Item 15g, Total.

Item 16. Enter "No" under Item b.

Item 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.

Item 18. To be signed by an authorized representative of the applicant organization. A document attesting to that sign-off authority must be on file in the applicant's office.

2. SF 424A—Budget Information

This form (SF424A) is designed to apply for funding under more than one grant program; thus, for purposes of this WHCoA program, most of the budget item columns/blocks are superfluous and should be regarded as not applicable. The applicant should consider and respond to only the budget items for which guidance is provided below. Section A—Budget Summary and Section B—Budget Categories should include both Federal and non-Federal funding for the proposed project.

Section A—Budget Summary

On line 5, enter total Federal Costs in column (e) and total Non-Federal Costs (including third party in-kind contributions but not program income) in column (f). Enter the total of columns (e) and (f) in column (g).

Section B—Budget Categories

Use only the last column under Section B, namely the column headed Total (5), to enter the total requirements for funds (combining both the Federal and non-Federal shares) by object class category.

A brief budget justification should be appended to this Section which shows the breakdown of budget cost items by Federal and non-Federal shares and justifies each of the major items, personnel, travel, other, etc.

Line 6a—Personnel: Enter total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included under 6h—Other.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits.

Line 6c—Travel: Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation.

Line 6d—Equipment: Enter the total cost of all equipment to be acquired by the project. The threshold for equipment is $500 or more per unit.

Line 6e—Supplies: Enter the total costs of all tangible expendable personal property (supplies) other than those included on line 6d.

Line 6f—Contractual: Enter of total costs of all contracts, if applicable. Do not include payments to individuals on this line.

Line 6g—Construction: Not applicable.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to: insurance, medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training cost, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments; and staff development costs.

Line 6i—Total Direct Charges: Show the totals of Lines 6a through 6h.

Line 6j—Indirect Charges: Not applicable.

Line 6k—Total: Enter the total amounts from Line 6i.

Section C—Non-Federal Resources

Line 12—Totals: As applicable, enter amounts of non-Federal resources that will be used in carrying out the proposed project. If third-party in-kind contributions are included, provide a brief explanation in the budget justification section.

Section D—Forecasted Cash Needs:

Not applicable.

Section E—Budget Estimate of Federal Funds Needed for Balance of the

Project

Line 20—Totals: Not applicable.

Section F—Other Budget Information

Line 21—Direct Charges: Not applicable

Line 22—Indirect Charges: Not applicable

Line 23—Remarks: Provide any other explanations or comments deemed necessary.

3. SF 424B—Assurances

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs. Please note that a duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances.

With the possible exception of an Assurance of Protection of Human Subjects, no other assurances are required. For research projects in which human subjects may be at risk, an Assurance of Protection of Human Subjects may be needed. If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301) 496–7041.

4. Certification Forms

Certifications are required of the applicant regarding: (1) Lobbying; (b) debarment, suspension, and other responsibility matters; and (3) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

5. Project Summary Description

On a separate page, provide a project summary description headed by the name of the applicant organization as shown in SF 424, item 5. Please limit the summary description to a maximum of 1,200 characters, including words, spaces and punctuation.

The description should be specific and succinct. It should outline the objectives of the mini-conference, the approaches to be used and the outcomes expected.

6. Program Narrative

The Program Narrative is the critical part of the application. It should be clear, concise, and, of course, responsive to the program under which the application is being submitted. In describing your proposed project, make certain that you respond fully to the evaluation criteria set forth in Section D above. The format of the narrative should, in fact, parallel the criteria.

Please have the narrative typed on one side of 8½"×11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) should be sequentially numbered, beginning with "Purpose and Need for Assistance" as page number one. (Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement).

The narrative should also identify the author(s) of the proposal, their relationship with the applicant, and the role they will play, if any, should the project be funded.

This narrative guidance is in accordance with that provided in OMB Circular A–102. The checklist reporting form (Section H, below) is consistent with that approved under OMB control number 0937–0189.

H. Points to Remember

1. There is a 10 double-spaced page limitation for the substantive parts of the application. Before submitting your application, please check that you have adhered to this requirement which is spelled out in Section C.

2. You are required to send an original and two copies of an application.

3. The summary description (1,200 characters or less) should accurately reflect the nature and scope of the proposed project.

4. In following the required format for preparing the program narrative, make certain that you have responded fully to the four (4) evaluative criteria which will be used by reviewers to evaluate and score all applications.

5. Before submitting the application, have someone other than the author(s): (1) apply the screening requirements to make sure you are in compliance; and (2) carry out a trial run review based upon the evaluative criteria. Take the opportunity to consider the results of the trial run and then make whatever changes you deem appropriate.

6. Applications must be mailed by midnight, or hand-delivered by 5:30 p.m., Eastern Time, on June 6, 1994 to the address below. Department of Health and Human Services, Administration on Aging, Office of Administration and Management, 330 Independence Avenue SW., Room 4644, Washington, D.C. 20201, Attn: WHCoA–94–2.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

BILLING CODE 4130–02–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application: ☐ Construction ☐ Non-Construction; Preapplication: ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify)

9. NAME OF FEDERAL AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER ☐☐☐ ☐☐☐
TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12. AREAS AFFECTED BY PROJECT (Cities, counties, states, etc.)

13. PROPOSED PROJECT

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

BILLING CODE 4130-02-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13 Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include deliquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4130-02-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
		$	$	$	$	$
TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
	$	$	$	$
TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Federal	$	$	$	$	$
NonFederal					
TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
	$	$	$	$
TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

Direct Charges:	22. Indirect Charges:

Remarks

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *muiltiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the total of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Column (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amoun ts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplemental) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–19) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988, (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § § 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–

544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § § 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Applicant Organization

Title

Date Submitted

Program Narrative Statement

A. New Applications

1. *Objectives and need for assistance.* Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. *Results or Benefits Expected.* Identify results and benefits to be derived. The anticipated contribution to policy, practice, theory and/or research should be indicated.

3. *Approach.* Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each project. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. *Geographic Location.* Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

5. If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: Name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance.

B. Supplemental Applications

Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes, or amendments, explain the reason for the changes(s). If the total budget has been exceeded or if the individual budget items have changed more than the prescribed limits, explain and justify the change and its effect on the project.

C. Continuation Applications

Continuation applications need only provide information explaining significant changes to the original Program Narrative Statement and a description of accomplishments from the prior budget period.

BILLING CODE 4130-02-M

(SAMPLE)

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED: July 31, 1994	Applicant Identifier: N/A
3. DATE RECEIVED BY STATE: N/A	State Application Identifier: N/A
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: XYZ Department on Aging

Organizational Unit: Office of Elder Affairs

Address (give city, county, state and zip code): 1234 Jones Street, Washington, D.C. 20201

Name and telephone number of the person to be contacted on matters involving this application (give area code): John Doe (202) 678-9012

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 1 2 – 3 4 4 6 7 8 9

7. TYPE OF APPLICANT (enter appropriate letter in box): A
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: ADMINISTRATION ON AGING

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: TITLE Special Programs for the Aging

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: White House Conference on Aging (State Conference)

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.): N/A

13. PROPOSED PROJECT: Start Date 08/01/94; Ending Date 07/31/95

14. CONGRESSIONAL DISTRICTS OF: a. Applicant 1; b. Project 1-2

15. ESTIMATED FUNDING

a. Federal	$ 6000 00
b. Applicant	$ 15,000 00
c. State	$ 00
d. Local	$ 00
e. Other	$ 10,000 00
f. Program Income	$ 00
g. TOTAL	$ 31,000

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: John Doe	b. Title: Executive Director	c. Telephone number: 202-678-9012
d. Signature of Authorized Representative		e. Date Signed: 7/1/94

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$ N/A	$ N/A	$ 6,000	$ 25,000	$ 31,000

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction	N/A	N/A	N/A	N/A	N/A
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					31,000
j. Indirect Charges	N/A	N/A	N/A	N/A	N/A
k. TOTALS (sum of 6i and 6j)	$ N/A	$ N/A	$ N/A	$ N/A	$ 31,000
7 Program Income	$ N/A	$ N/A	$ N/A	$ N/A	$ N/A

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$ N/A	$ N/A	$ N/A	$ N/A	$ N/A

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19. N/A				
20. TOTALS (sum of lines 16 -19)	$ N/A	$ N/A	$ N/A	$ N/A

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
N/A	N/A

23. Remarks:

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BILLING CODE 4130-02-C

U.S. Department of Health and Human Services—Certification Regarding Drug-Free Workplace Requirements—Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) the grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and 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 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or

local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal Appropriated Funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Margaret A. Tolson, Director; Grants Management Division; 330 Independence Avenue, S.W., Room 4256-COHEN; Washington, D.C. 20201-0001.

[FR Doc. 94-11383 Filed 5-10-94; 8:45 am]

BILLING CODE 4130-02-M

Food and Drug Administration

[Docket No. 94N-0166]

Drug Export; PrVerapamil Injection, U.S.P. 2.5 mg/mL, 2 mL Vial, and 4 mL Vial

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ben Venue Laboratories, Inc., has filed an application requesting approval for the export of the human drug PrVerapamil Injection, U.S.P. 2.5 milligrams/milliliter (mg/mL), 2 mL vial, and 4 mL vial to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ben

Venue Laboratories, Inc., 270 Northfield Rd., P.O. Box 46568, Bedford, OH 44146, has filed an application requesting approval for the export of the human drug PrVerapamil Injection, U.S.P. 2.5 mg/mL, 2 mL vial, and 4 mL vial to Canada. PrVerapamil Injection, U.S.P. 2.5 mg/mL, 2 mL vial, and 4 mL vial is indicated for the rapid conversion to sinus rhythm of paroxysmal supraventricular tachycardias. When clinically advisable, appropriate vagal maneuvers should be attempted prior to PrVerapamil Injection administration. The application was received and filed in the Center for Drug Evaluation and Research on April 22, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 23, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 3, 1994.

Stephanie R. Gray,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94-11440 Filed 5-10-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93E-0268]

Determination of Regulatory Review Period for Purposes of Patent Extension; Reality™ Female Condom

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Reality™ Female Condom and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved the Reality™ Female Condom for marketing. The Reality™ Female Condom is a medical device that is indicated for use to help prevent pregnancy and sexually transmitted diseases, including the human immunodeficiency virus (HIV) infection, during vaginal intercourse. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for the Reality™ Female Condom (U.S. Patent No. 4,976,273) from Chartex International Plc; the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 28, 1993, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period, and the approval of the Reality™ Female Condom represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for the Reality™ Female Condom is 2,017 days. Of this time, 1,460 days occurred during the testing phase of the regulatory review period, while 557 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date the first clinical trial on this device was begun*: October 31, 1987. The clinical trial cited by the applicant was conducted outside the United States and was not subject to FDA's requirement for an investigational device exemption (IDE) under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) nor FDA's requirement for an institutional review board (IRB) approval under section 520(g)(3) of the act. Therefore, the testing phase begins on the date the device is first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device (21 CFR 60.22(c)(1)(iii)). The applicant has stated that the date on which the device was first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device was October 31, 1987. Because of the circumstances previously described for the clinical trial cited by the applicant, FDA has no record in which to review this date (21 CFR 60.20(c)(6). Although FDA cannot, therefore, confirm that testing began as stated by the applicant, FDA is using this date as the start of the testing phase.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act*: October 29, 1991. FDA has verified the applicant's claim that the premarket approval application (PMA) for the Reality™ Female Condom (PMA P910064) was initially submitted on October 29, 1991.

3. *The date the application was approved*: May 7, 1993. FDA has

verified the applicant's claim that PMA P910064 was approved on May 7, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 717 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 11, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 7, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–11439 Filed 5–10–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1994.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: June 3–5, 1994.

Place: Radisson Hotel Newark Airport, 128 Frontage Road, Newark, New Jersey 07114, (201) 690–5500. The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The meeting will begin on Friday, June 3, at 8:30 a.m. with site visits to health care facilities in New Jersey and New York City. The agenda for the business meetings on Saturday and Sunday, June 4–5, will include updates on the Bureau of Primary Health Care, the National Health Service Corps, presentations by New York public health officials, universal service, and mental and dental health issues.

The meeting is open to the public, however, no transportation will be provided for the site visits.

Anyone requiring information regarding the subject Council should contact Ms. Nada Schnabel, National Advisory Council on the National Health Service Corps, 8th floor, 4350 East West Highway, Rockville, Maryland 20857, Telephone (301) 594–4136.

Agenda items are subject to change as priorities dictate.

Dated: May 6, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–11363 Filed 5–10–94; 8:45 am]

BILLING CODE 4160–15–P

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1994:

Name: National Advisory Committee on Rural Health.

Date and Time: June 13–15, 1994; 1:30 p.m.

Place: The Des Moines Marriott, 700 Grand Avenue, Des Moines, IA 50309, (515) 235–5500. The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: Plenary session on Monday, June 13, will be devoted to "The Health Care Reform in Rural Areas and Telemedicine." Other plenary topics will include discussions and presentations on the changes on farm safety, rural physician recruitment and placement, and a rural community empowerment project, "Hometown Health." In addition, a presentation regarding the application of the field of telemedicine in Health Care Reform will be provided at the Iowa Methodist Medical Center. A trip to the Farm Bureau has been planned for Monday evening. The presentation will cover the Bureau's Farm Safety Program.

The Education and Health Services Work Group and the Health Care Financing Work Group will meet between plenary sessions on developing recommendations and strategies for improving health services delivery in rural areas.

The meeting will adjourn on Wednesday, June 15, at noon. (Transportation on field trips will not be provided. All sessions are open to the public.)

Anyone requiring information regarding the subject Council should contact Jeffery Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Name: National Commission on Allied Health

Date and Time: June 20–21, 1994, 8:30 a.m.

Place: Stouffer Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. The meeting is open to the public.

Purpose: The National Commission on Allied Health shall: (1) Make recommendations to the Secretary of Health and Human Services, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives, with respect to: (A) The supply and distribution of allied health personnel throughout the United States; (B) current and future shortages or excesses of allied health personnel, particularly in medically underserved and rural communities; (C) priority research needs within the allied health professions; (D) appropriate Federal policies relating to the matters described in subparagraphs (A) through (C), including policies concerning changes in the financing of undergraduate and graduate allied health programs, changes in the types of allied health education, and the appropriate Federal role in the development of a research base in the allied health professions; (E) appropriate efforts to be carried out by health care facilities, schools and programs of allied health, and professional associations with respect to the matter referred to in subparagraph (A), including efforts for changes in undergraduate and graduate allied health education programs, and private support for research initiatives; (F) deficiencies and needs for improvements in existing data bases concerning the supply and distribution of training programs for allied health in the United States and steps that should be taken to eliminate such deficiencies; and (G) problems, and recommendations for the resolution of such problems, relating to the roles and functions of professionals within the allied health fields and other fields such as medicine and dentistry; and (2) encourage entities providing allied health education to conduct activities to voluntarily achieve the recommendations of the Commission.

Agenda: The agenda includes Opening and Welcome remarks; Introduction of members; Congressional perspective of the Commission; Public Advisory Committee Overview; Election of the Chairperson; development of subcommittees; presentations on supply and distribution, shortages and excess and current research activities.

Anyone requiring information regarding the Committee should contact Mr. Neil H.

Sampson, Director, Division of Associated, Dental, and Public Health, Bureau of Health Professions, Health Resources and Services Administration, room 8–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6853.

Agenda Items are subject to change as priorities dictate.

Dated: May 5, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–11362 Filed 5–10–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on June 2, 1994, at the National Institutes of Health, Bethesda, Maryland 20892, from 8:30 a.m. to 4:30 p.m., in Building 31, Conference Room 10, C Wing. The meeting will be open to the public. Attendance by the public will be limited to space available.

The topics proposed for discussion include: (1) Review of the NIH Intramural Research Program; (2) Review of the FIAU Studies; (3) Academia/Industry Sponsored Research Agreements; (4) Report of the NIH Human Embryo Research Panel; and (5) Report of the Panel on Antisocial, Aggressive, and Violence-Related Behaviors and Their Consequences.

The Executive Secretary, Sandy Chamblee, J.D., National Institutes of Health, Shannon Building, room 103, Bethesda, Maryland 20892, (301) 496–2122, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carol Chism on (301) 496–3154 in advance of the meeting.

Dated: May 4, 1994.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 94–11465 Filed 5–10–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Centers for Disease Control and Prevention: Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HC (Centers for Disease Control and Prevention), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 59 FR 4720–4721, February 1, 1994) is amended to reflect the revision of the functional statements for the Division of Surveillance and Epidemiology (DSE), and the Office of the Director, DSE, Epidemiology Program Office (EPO).

Section HC–B, Organization and Functions, is hereby amended as follows:

Delete the functional statements for the *Division of Surveillance and Epidemiology (HCB5)* and the *Office of the Director (HCB51)* and insert the following:

(1) Collects, analyzes, and disseminates public health surveillance information;

(2) Develops, implements, and evaluates innovative statistical and data management methods for application to public health surveillance and epidemiology;

(3) Coordinates activities of the CDC Surveillance Coordination Group;

(4) Manages and operates the National Notifiable Disease Surveillance System and the 121 Cities Mortality Reporting System and produces statistical tables and graphics for the Morbidity and Mortality Weekly Report (MMWR) and associated publications;

(5) Develops, manages, and supports effective national telecommunications systems for surveillance and epidemiology;

(7) Provides consultation, technical assistance, and training on surveillance to CDC and to other agencies and domestic and international organizations;

(8) Develops, coordinates, and conducts special epidemiologic and statistical studies;

(9) Provides consultation on analytic methods and data management on surveillance and epidemiologic issues throughout CDC;

(10) Maintains, manages, and coordinates selected data bases for use in collaborative research.

Office of the Director (HCB51). (1) Provides leadership and direction for all activities of the Division of Surveillance and Epidemiology; (2) provides leadership and guidance on policy, program planning, program management, and operations; (3) establishes Division goals, objectives, and priorities; (4) monitors progress in implementation of projects and achievement of objectives; (5) provides management, administrative, and support services, and coordinates with appropriate EPO offices on program and administrative matters; (6) provides liaison with other CDC organizations, other governmental agencies, international organizations, the Council of State and Territorial Epidemiologists, and other outside groups; (7) plans, allocates, and monitors resources; (8) provides scientific leadership and guidance to the Division to assure highest scientific quality and ethical standards; (9) plans and activities of the CDC Surveillance Coordination Group.

Effective Date: May 2, 1994.

Claire V. Broome,

Acting Director.

[FR Doc. 94–11418 Filed 5–10–94; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–94–1061; FR–3722–D–01]

Delegations and Redelegations of Authority; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Correction of effective dates.

SUMMARY: This notice corrects two notices of delegation of authority and five notices of redelegation of authority published in the **Federal Register** on Friday, April 15, 1994 as part IV, at 59 FR 18276, to change the effective date from April 8, 1994 or April 12, 1994 to April 15, 1994.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: John B. Shumway, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–9988.

SUPPLEMENTARY INFORMATION: On Friday, April 15, 1994, the Department of Housing and Urban Development published two notices of delegation of authority and five notices of redelegation of authority in the **Federal Register** as part IV, at 59 FR 18276, to implement the reorganization of the HUD field structure. It was intended that the effective date for these notices

would all be April 15, 1994. In error, the effective dates for these notices reflected the date of signature for each document and consequently, ranged from April 8, 1994 to April 12, 1994. Therefore, in this notice, the effective date for each of these notices is changed to April 15, 1994.

Accordingly, the effective dates for the Delegations and Redelegations of Authority published in the Federal Register on April 15, 1994, at 59 FR 18276, are corrected to read as follows:

1. On page 18276, in FR Doc. 94–9230, the effective date of the Delegation of Authority concerning Limited Denial of Participation sanctions [Docket No. D–94–1057; FR–3701–D–01] is corrected from April 8, 1994 to read April 15, 1994.

2. On page 18276, in FR Doc. 94–9233, the effective date of the Delegation of Procurement Authority [Docket No. D–94–1059; FR–3697–D–01] is corrected from April 12, 1994 to read April 15, 1994.

3. On page 18277, in FR Doc. 94–9235, the effective date of the Amendment of Redelegations of Authority under the Fair Housing Act [Docket No. D–94–1058; FR–3704–D–01] is corrected from April 12, 1994 to read April 15, 1994.

4. On page 18277, in FR Doc. 94–9234, the effective date of the Redelegation of Procurement Authority [Docket No. D–94–1059; FR–3697–D–02] is corrected from April 12, 1994 to read April 15, 1994.

5. On page 18279, in FR Doc. 94–9231, the effective date of the Revocation and Redelegation of Authority for the Office of Public and Indian Housing [Docket No. D–94–1055; FR–3696–D–01] is corrected from April 12, 1994 to read April 15, 1994.

6. On page 18280, in FR Doc. 94–9232, the effective date of the Revocation and Redelegation of Authority for the Office of Community Planning and Development [Docket No. D–94–1060; FR–3674–D–01] is corrected from April 12, 1994 to read April 15, 1994.

7. On page 18282, in FR Doc. 94–9236, the effective date of the Revocation and Redelegation of Authority for the Office of Housing [Docket No. D–94–1056; FR–3668–D–02] is corrected from April 8, 1994 to read April 15, 1994.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42, U.S.C. 3535(d).

Dated: April 29, 1994.

Sally Warner Watts,

Acting Assistant General Counsel for Regulations.

[FR Doc. 94–11332 Filed 5–10–94; 8:45 am]

BILLING CODE 4210–32–M

Office of Administration

[Docket No. N-94-3760]

Notices of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 20, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development (FR–0770).

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and Its Proposed Use: HUD adopts procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development. This rule implements Section 504 of the Rehabilitation Act of 1973, as amended.

Form Number: None.

Respondents: Individuals or households, State or Local Governments, businesses or other for-profit, Federal Agencies or employees, non-profit institutions, and small businesses or organizations.

Fequency of Submission: On occasion

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Transition Plan	218,731	..	1	..	6.46		1,413,470

Total Estimated Burden Hours: 1,413,470.

Status: Extension, no changes.

Contact: Elizabeth Ryan, HUD, (202) 708-2333 and Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: April 20, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mandatory Meals Program in Multifamily and Cooperative Projects for the Elderly.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Housing project owners may require tenants of elderly assisted housing to participate in and pay for a mandatory meals program as a condition of occupancy in projects equipped with a central kitchen and dining facilities.

Form Number: None.

Respondents: Individuals or households, businesses or other for-profit, Federal agencies or employees, and non-profit institutions.

Frequency of Submission: On occasion and recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	400		1		3		1,200
Recordkeeping	400		1		2		800

Total Estimated Burden Hours: 2,000.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 708–3944 and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 20, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Service Coordinators in Sections 8, 202, 221, and 236 Housing Projects.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This reporting requirement will enable HUD to evaluate and review applications on an on-going basis for the Sections 8, 202, 221, and 236 housing projects' approval to hire Service Coordinators. This information will assist the Department in monitoring its responsibilities to assure adherence and compliance to statutory and regulatory requirement of the program.

Form Number: HUD–92453–B and 52670.

Respondents: Individuals or households and non-profit institutions.

Frequency of Submission: On occasion, monthly, annually, and recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	27,500		64		4.21		8,887

Total Estimated Burden Hours: 8,887.

Status: Revision.

Contact: Jerold S. Nachison, HUD, (202) 708–3291 and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 28, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Pre-Foreclosure Sale Demonstration Program.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Defaulting mortgagors with stagnant or declining property values can qualify to sell their homes at current fair market value to third-party buyers. HUD pays the shortfall between sales proceeds and mortgage indebtedness to the mortgagee via the claims process. Mortgagor avoids foreclosure; HUD saves foreclosure, maintenance and marketing costs.

Form Number: HUD–90036, 90037, 90038, 90039, 90041, 90042, 90042A, 90044, 90045, 90046, 90047, 90048, 90049, 90050, 90051, 90052 and 90054.

Respondents: Individuals or households, business or other for-profit and non-profit institutions.

Frequency of Submission: Monthly and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	3,149		Varies		5.67		17,854

Total Estimated Burden Hours: 17,854.

Status: Extension, no changes.

Contact: Gilbert N. Longo, HUD, (202) 708–1719 and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 21, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Prepayment of a HUD-Insured Mortgage by an Owner of Low-Income Housing (FR–2978).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This rule gives regulatory effect to legislative provisions governing prepayment to HUD-Insured mortgages. These provisions are intended to preserve affordable multifamily housing units for lower-income families while fairly compensating the owners of those units and providing homeownership opportunities for project residents.

Form Number: HUD–9608 and 9609.

Respondents: Non-profiting institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	1,288		1		42.55		54,762

Total Estimated Burden Hours: 54,762.

Status: Reinstatement with changes.

Contact: Besty Keeler, HUD (202) 708–1142 and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 21, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Survey of New Mobile Home Placements.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: This survey is used to collect data on the placement of new mobile homes. The data are collected from mobile home dealers. The principal user, HUD, uses the statistics to monitor trends in this type of low-cost housing, to formulate policy, draft legislation, and evaluate programs.

Form Number: C–MH–9A and C–MH–9B.

Respondents: Businesses or other for-profit and small businesses or organizations.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	4,000		2		.5		4,000

Total Estimated Burden Hours: 4,000.

Status: Extension, no changes.

Contact: Connie, Casey, HUD (202) 708–1060, David Fondelier, Census, (301) 763–5731, and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 31, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Default Monitoring System.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The form is needed for reporting default information to HUD. The data is compiled for various reports used to monitor mortgagee's default and foreclosure performance. Additionally, HUD uses the data to monitor and evaluate mortgagee's servicing practices and to measure potential risk to HUD's Insurance Fund.

Form Number: HUD–92068–A.

Respondents: Individuals or households, businesses or other for-profit, and small businesses or organizations.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92068–A	4,000		12		.5		24,000

Total Estimated Burden Hours: 24,000.

Status: Reinstatement with changes.

Contact: Leslie Bromer, HUD (202) 708–1719 and Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 31, 1994.

[FR Doc. 94–11324 Filed 5–10–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3720; FR–3617–N–02]

Submission of Proposed Information Collection to OMB, Application Requirements for Indian HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comments due date: May 23, 1994.

ADDRESSES: Comments should refer to the proposal by name and should be sent to:

Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; or,

Joan Campion, Rules Docket Clerk, Department of Housing and Urban Development (HUD), 451 7th Street, SW., room 10276, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development (HUD), 451 7th Street, SW., room 4178, Washington, DC

20410, telephone number (202) 708–0050. This is not a toll-free number. Copies of the document submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of HUD has submitted to OMB, for expedited processing, an information collection package with respect to the information required for application for grant funding for the Indian HOME Program. It also is requested that OMB complete its review by May 23, 1994. The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

(1) *Title of the information collection proposal:* Application requirements for Indian HOME Program.

(2) *Office of the agency to collect the information:* Office of the Assistant Secretary for Public and Indian Housing.

(3) *Description of the need for the information and its proposed use:* The data that will be collected are required by the HOME Investment Partnerships Act and supports eligible applicant's request to apply for grant funding under the Indian HOME Program.

(4) *Agency form numbers:* HUD–4121–I, HUD–4122–I, HUD–4123–I, HUD–4125–I, HUD–4126–I.

(5) *Members of the public who will be affected by the proposal:* Indian Tribes; Individuals or Households.

(6) *How frequently information submissions will be required:* One-time a Fiscal Year.

(7) *An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response and hours of response:* See attached chart with a total of 5,325 burden hours.

(8) *Type of request:* New.

(9) *The names and telephone number of an agency official familiar with the proposal:* Dominic Nessi, Director, Office of Native American Programs.

Authority: Public Law 101–625, dated 11/28/90.

Dated: April 6, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application Requirements for Indian HOME Program.

Office: Office of Native American Programs, PIH.

Description of the Need From the Information and Its Proposed Use: This information collection is required by the HOME Investment Partnership Act. Indian Tribe, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of U.S. (eligible applicants) will submit an application which includes HUD-approved and OMB forms, certifications, narrative and supporting documentation that are responsive to selection criteria including how HOME funds will be used. The information provided to HUD will be reviewed and evaluated against rating criteria for possible grant funding.

Form Numbers: HUD–4121–I, Indian HOME Program Grants Comprehensive Approach, HUD–4122–I, Indian HOME Program Grants Project Summary, HUD–4123–I, Indian HOME Program Grants, Cost Summary, HUD–4125–I, Indian HOME Program Grants, Implementation Schedule, HUD–4126–I, Indian HOME Program Grant Certifications.

Respondents: Indian Tribes.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Application Requirements	75		1		71 aver.		5,325

Total Burden: 5,325.

Status: New Collection.

Contact: Dominic Nessi, (202) 708–1015.

Dated: April 6, 1994.

Supporting Statement for Information Collection—Notice of Fund-Availability—FY 1994—Indian Applicants Under the Home Program

A. Justification

1. This information collection is required in connection with the publication in the **Federal Register** of a Notice of Fund Availability (NOFA) which announced the availability of $12.750 million for the HOME Program for Indian tribes. The NOFA is authorized by the HOME Investment Partnerships Act (Pub. L. 101–625, dated 11/28/90). The HOME Program provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. HUD regulations 24 CFR part 92, subpart M apply specifically to the Indian HOME Program. The HOME Act was amended 10/28/92 by the Housing and Community Development (HCDA) Act of 1992 (Pub. L. 102–550). Some provisions of the HCDA 1992 directly affect the enactment. Copies of the 1994 HOME NOFA and applicable HUD regulations are attached.

The information collection requirements imposed by the NOFA are as follows:

Section III (entirety)—Application requirements: Standard Form–424, Form HUD–4121.1, Indian HOME Program Grants Comprehensive Approach, Form HUD–4122.1, Indian HOME Program Grants Project Summary, Form HUD–4123–I, Indian HOME Program Grants, Cost Summary, Form HUD–4125–I, Indian HOME Program Grants, Implementation Schedule, Form HUD–4126–I, Indian HOME Program Grant Certifications, narrative and supporting documentation that are responsive to the selection criteria including a description of how the HOME funds will be used, and the various kinds of information that are necessary in order to apply the selection criteria and rating factors.

2. The information is necessary so that the applicants can apply and compete for funding opportunities under this NOFA. The information provided by the applicants will be reviewed by HUD and evaluated against rating criteria for possible funding. The applicants will be notified of their selection/rejection.

3. We have not considered the use of improved technology since there is no other way to obtain the information except directly from the entities.

4. There will be no duplication of information.

5. There is no similar information already available which could be used or modified for this purpose.

6. We attempted to minimize the burden on the applicants by developing an application which limits the number of pages (not to exceed five).

7. The information will be collected on a one-time basis.

8. There are no special circumstances that require the collection to be conducted in a manner which is inconsistent with the guidelines in 5 CFR 1320.6.

9. There has been no outside consultation on this information collection.

10. No assurances of confidentiality is provided.

11. No sensitive questions are asked.

12. We do not estimate that there will be any additional cost to the Federal Government. The applicants will be reviewed in accordance with HUD's existing review and monitoring requirements. Annual cost to the respondent is estimated to be minimal since the application submission may be prepared by the Indian Housing Authorities.

13. We estimate that the information requirements of the proposed NOFA will have the following reporting burden:

Section of NOFA affected	Number of respondents	No. respdts. per response	Total annual resps.	Hours per resps.	Total No. hrs.
III.B. (HUD–4121–I)	75	1	75	17	1,275
III.C. (HUD–4122–I)	75	1	75	20	1,500
III.E. (HUD–4123–I)	75	1	75	15	1,125
III.F. (HUD–4125–I)	75	1	75	18	1,350
III.I. (HUD–4126.1)	75	1	75	1	75
Total annual burden					5,325

14. The information collection requirements are new.

15. The collection of this information will not be published for statistical use.

BILLING CODE 4210–33–M

Application for
Indian HOME Program
Grant

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Comprehensive Approach

OMB Approval No. 2577-XXXX (exp. XX/XX/XX)

Public reporting burden for this collection of information is estimated to average 17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-XXXX), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

General Instructions: All applicants for funds from the Indian HOME Program must submit this form accompanied by Standard Form 424, form HUD-4122-I (Project Summary), form HUD-4123-I (Cost Summary), form HUD-4125-I (Implementation Schedule), form HUD-2880 (Applicant/Recipient Disclosure/Update Report), maps and components that address the relevant selection criteria. Information submitted on these forms will be used to rate and rank applicant's projects to determine funding. For instructions in filling out SF-424, refer to the form itself.

1. Name of Applicant	2. Application/Grant Number (To be assigned by HUD upon submission)	
3. Name of Project	4. ☐ Original (check here if this is the first submission to HUD)	Date
	☐ Amendment (check here if submitted after grant award)	Date

5. **Comprehensive Approach.** Component that addresses the Comprehensive Approach for Expanding the Supply of Affordable Housing threshold. Indian tribes are not required to submit a Comprehensive Housing Affordability Strategy (CHAS), a Tribal Housing Plan, or a housing strategy to receive HOME funds. However, the application must demonstrate how the proposed project will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.

Application for
Indian HOME Program
Grant

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Project Summary

OMB Approval No. 2577-XXXX (exp. XX/XX/XX)

DRAFT

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600, and to the Office of Management and Budget, Paperwork Reduction Project (2577-XXXX), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

Note: Items 1 through 4 on this form should be the same as form HUD-4121-I

1. Name of Applicant	2. Application/Grant Number (To be assigned by HUD upon submission)	
3. Name of Project	4. ☐ Original (check here if this is the first submission to HUD)	Date
	☐ Amendment (check here if submitted after grant award)	Date

5. **Summary Description of Project.** Component that addresses the summary description of the proposed project threshold.

Application for Indian HOME Program Grant (IHPG) Cost Summary

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-xxxx (exp.)

Public reporting burden for this collection of information is estimated to average 15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (25XX-XXXX), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

DRAFT

1. Name of Applicant

2. Application/Grant Number (To be assigned by HUD)

3. ☐ **Original** Check here if first Submission to HUD ☐ **Revision** Check here if submitted with Implementation Schedule as part of pre-award requirements ☐ **Amendment** Check here if submitted after HUD approval of grant

Date

4. Project Name/Project Type (See instructions on back)	Program Funds (in thousands of $)		
	IHPG	Other	
	Enter amount requested	Enter other source amount	Enter source of other funds
a	b	c	d
	$	$	

Definitions for Selected Items in form HUD-4123-I

Item 4. Project Name/Project Type

Enter project name and the name of one of the following four Indian HOME Program project types: Acquisition, Rehabilitation, New Construction, Tenant-based Rental Assistance.

DRAFT

Application for
Indian HOME Program
Grant

U.S. Department of Housing
and Urban Development
Office of Public and Indian
Housing

Implementation Schedule

OMB Approval No. 2577-XXXX (exp. XX/XX/XX)

Public reporting burden for this collection of information is estimated to average 18 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (25XX-XXXX), Washington, D.C. 20503. Do not send this competed form to either of the above addressees.

1. Name of Applicant	2. Application/Grant Number (to be assigned by HUD)	3. ☐ Original (First submission to HUD) ☐ Pre-Award Submission ☐ Amendment (submitted after grant approval)	Date

4. Name of Project	5. Effective Date (Mo./Yr.)	Expected Completion Date (Mo./Yr.)	Expected Closeout Date (Mo./Yr.)

6. Environmental Review Status

☐ **Exempt** (As described in 24 CFR 58.34)

☐ **Under Review** (Review underway; findings not yet made)

☐ **Finding of No Significant Impact** (Finding made that request for release of funds for project is not an action which may significantly affect the environment.)

☐ **Categorically Excluded** (As described in 24 CFR 58.35)

☐ **EIS Required** (Finding that project may significantly affect environment or EIS automatically required by 24 CFR 58.37)

☐ **Not Started** (Review not yet begun)

☐ **Certification** (Environmental review completed; certification and request for release of funds being prepared for submission.)

7. Task List: (List tasks such as environmental assessment, etc.)

8. Schedule: Use Calendar quarters. If project begins in May (for example), enter under "1st Qtr.", A(April), M(May), J(June). Indicate time period acquisition, required to complete each activity by entering "X" under the months it will begin and end. Draw a horizontal line from the first to the second "X". If completion date will extend beyond the 8th quarter, enter date in the far right column and attach an explanation.

	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	5th Qtr.	6th Qtr.	7th Qtr.	8th Qtr.	Date (If exceeds 8th Quarter)
9. Planned Drawdowns by Quarter (Enter Amounts Non-cumulatively)	$	$	$	$	$	$	$	$	$ Total
10. Cumulative Drawdown (If more than one page, enter total on last page only)	$	$	$	$	$	$	$	$	$ Total

Previous Edition Obsolete

Page of pages

form HUD-4125-I (12/14/93)

Application for
Indian HOME Program
Grant
Certifications

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-XXXX (exp. XX/XX/XX)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-XXXX), Washington, D.C. 20503. Do not send this completed form to either of the above addresses.

General Instructions: All applicants shall submit this form as part of the application.

The certifying representative of the grantee shall sign and date the certifications below.

The applicant hereby certifies and assures that it will comply with the regulations, guidelines, and requirements with respect to the acceptance and use of Federal funds for this Federally-assisted program. Also, the applicant gives assurances and certifies with respect to the grant that:

A. It possesses the legal authority to apply for the grant and execute the proposed program.

B. The governing body has duly authorized the filing of the application, including all understandings and assurances contained in the application and has directed and authorized the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

C. The chief executive officer or other official of the applicant approved by HUD:

1. Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 when the provisions of the Act apply to the applicant's proposed program under 24 CFR Part 58, instead of Part 50; and

2. Is authorized and consents on behalf of the applicant and him/her self to accept the jurisdiction of the Federal courts for the purpose of enforcement of his/her responsibilities as such an official.

Note: Applicants for whom HUD has approved a claim of incapacity to accept the responsibilities of the Federal government for purposes of complying with the environmental review requirements of 24 CFR Part 58 need not include the provision of paragraph C, above in their assurance.

D. It will comply with the HUD general administration requirements in 24 CFR Part 85.

E. It will use HOME funds in compliance with all the requirements of 24 CFR part 92, the HOME investment partnerships program interim rule.

F. It will comply with the requirements of Title II of Public Law 90-284 (25 USC 1301) (the Indian Civil Rights Act).

G. It will comply with the Indian preference provisions required in 24 CFR 92.631 and 92.632.

H. It will establish written safeguards to prevent employees from using positions funded under the Indian HOME Grant Program for a purpose that is, or gives the appearance of being, motivated by private gain for themselves, their close family or business associates. Nothing in this certification should be construed as to limit employees from benefiting from program activities for which they would otherwise be eligible.

I. It will give HUD and the Comptroller General access and right to examine all books, records, papers, or documents related to the grant for a period of not less than three years after program completion or until resolution of any final audit findings.

J. It will provide the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

K. Neither the applicant nor its principals are presently excluded from participation in any HUD programs, as required by 24 CFR part 24, appendix A.

L. It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of section 92.634.

Signature		
Name (Type or print)	Title	Date

Previous Edition Obsolete

form HUD-4126-I (3/23/94)

[FR Doc. 94–11325 Filed 5–10–94; 8:45 am]
BILLING CODE 4210–33–C

[Docket No. N-94-3565; FR-3400-N-02]

Announcement of Funding Awards for Fiscal Year 1993 Indian Applicants Under the HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1993 Indian Applicants under the HOME Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to expand the supply of affordable housing.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Native American Programs, U.S. Department of Housing and Urban Development, room 4140, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1015.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-6339, or 202-708-9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The HOME Investment Partnerships Act (title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101-625). The HOME Act creates the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. Regulations for the HOME Investment Partnerships Program are codified at 24 CFR part 92. The requirements of 24 CFR part 92, subpart M (§§ 92.600-92.652) apply specifically to the Indian HOME program.

On February 23, 1993, HUD published a Notice of Funding Availability announcing the availability of $10 million in FY 1993 funds for Indian Applicants under the HOME program (58 FR 11102). The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFAs. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance under the FY 93 Indian HOME Program Funding Competition, by Name, Address, and Grant Amount

1. Manley Village Council, President: Elizabeth M. Woods, P.O. Box 23, Manley Hot Springs, Alaska 99756, Grant amount: $270,108.
2. Evansville Traditional Council, Chief: Rhoda Musser, P.O. Box 25, Bettles, Alaska 99726, Grant amount: $324,670.
3. Eastern Band of Cherokee Indians, Jonathan Taylor, Principal Chief, P.O. Box 455, Cherokee, North Carolina 28719, (704) 497-4771, Grant amount: $1,512,561.
4. Forest County Potawatomi Community, Al Milham, Chairman, P.O. Box 340, Crandon, Wisconsin 54520, (715) 478-2903, Grant amount: $183,000.
5. Mississippi Band of Choctaw Indians, Phillip Martin, Chairman, P.O. Box 6010, Philadelphia, Mississippi 39350, (601) 656-5251, Grant amount: $772,504.
6. White Earth Reservation Tribal Council, Darrell Wadena, Chairman, P.O. Box 418, White Earth, Minnesota 56591, (218) 983-3285, Grant amount: $689,748.
7. Pasqua Yaqui Indian Tribe, Tribal Chairperson: Albert Garcia, 7474 South Camino Deoste, Tuscan, AZ 85746, Grant amount: $1,700,000.
8. Navajo Indian Tribe, Tribal Chairperson: Peterson Zah, P.O. Box 1896, Window Rock, AZ 86515, Grant Amount: $2,017,767.
9. Blackfeet Tribe, Indian Reservation, Montana, Tribal Chairperson: Honorable Earl Old Person, P.O. Box 850, Browning, Montana 59417, Total amount of grant awarded: PR #1—$ 808,874; PR #2—808,884; PR #3—911,864; Total $2,529,622.

Dated: April 26, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94-11330 Filed 5-10-94; 8:45 am]

BILLING CODE 4210-33-P

Office of Native American Programs

[Docket No. D-94-1063; FR-3708-D-01]

Redelegation of Authority for Indian Programs

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice of redelegation of authority, the Director of the Office of Native American Programs is redelegating to Field Office of Native American Programs (FONAP) Administrators all power and authority, subject to certain specified exceptions, within their respective jurisdictions for: The management, development and acquisition of public housing for Indian families, including the modernization of existing public housing projects for Indian families; the development and acquisition of public housing under the Mutual Help Homeownership Opportunity Program; the HOME Investment Partnerships Program; and the Indian Community Development Block Grant (CDBG) Program.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dominic A. Nessi, Director, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4140, 451 7th Street, SW., telephone (202) 708-1015. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register on March 1, 1994, at 59 FR 9764, the Assistant Secretary for Public and Indian Housing redelegated all power and authority previously redelegated to HUD Regional Administrators with respect to Indian and Alaska Native programs, as well as any further redelegation of that authority, to the Director, the Deputy Director for Headquarters Operation, and the Deputy Director for Field Operations, Office of Native American Programs, subject to certain exceptions. In this notice, the Director of the Office of Native American Programs is redelegating to Field Office of Native American Programs (FONAP) Administrators all power and authority, subject to certain specified exceptions, within their respective jurisdictions for: The management, development and acquisition of public housing for Indian families, including the modernization of existing public housing projects for Indian families, pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); the development and acquisition of public housing under the Mutual Help Homeownership Opportunity Program under section 202 of the United States Housing Act of 1937 (42 U.S.C. 1437bb); the HOME Investment Partnerships (HOME) Program for Indian tribes under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*); and the Indian Community Development Block Grant (CDBG) Program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301).

Accordingly, the Director of the Office of Native American Programs redelegates as follows:

Section A. Authority Redelegated

Each Field Office of Native American Programs (FONAP) Administrator is authorized by the Director of the Office of Native American Programs to exercise all power and authority, within their respective jurisdictions, required to administer the following programs, for Indian families:

(1) The management, development and acquisition of public housing for Indian families, including the modernization of existing public housing projects for Indian families, pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*);

(2) The development and acquisition of housing under the Mutual Help Homeownership Opportunity Program under Title II of the United States Housing Act of 1937 (42 U.S.C. 1437bb);

(3) The HOME Investment Partnerships (HOME) Program for Indian tribes under Title II of the Cranston Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*); and

(4) The Indian Community Development Block Grant (CDBG) Program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301).

Section B. Authority Excepted

The authority delegated under section A does not include the power to sue and be sued or to issue or waiver rules and statutes.

(1) With respect to section A, paragraphs (1) and (2) above, the authority redelegated does not include the authority to:

(a) Assign operating funds to the FONAPs for subassignment to the Indian housing Authorities (IHAs);

(b) Allocate or reallocate funds pursuant to section 213 of the Housing and Community Development Act of 1974;

(c) Issue a notice of default under Article V, Low-rent Housing Annual Contributions Contract (ACC) or Article XIII, Mutual Help Housing ACC; and

(d) Respond to an appeal by an IHA regarding a determination of high risk in a case which involves actions related to a determination of ineligibility for funding.

(2) With respect to section A, paragraph (3) above, the authority redelegated does not include the authority to:

(a) effect remedies for noncompliance requiring notice and an opportunity for an administrative hearing;

(b) Provide for distribution of amounts under section 217(a)(2) of the National Affordable Housing Act (42 U.S.C. 12747(a)(2));

(c) Make determinations of the eligibility of Indian Tribes and Alaska Native Villages to participate in the HOME for Indians Program except that those officials designated in Section A may make those determinations of eligibility that can be made from lists provided to them each fiscal year by the Assistant Secretary for Public and Indian Housing; and

(d) Determine that an applicant lacks the legal capacity to assume or carry out environmental review responsibilities pursuant to section 288 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12838).

(3) With respect to section A, paragraph (4) above, the authority redelegated does not include the authority to:

(a) Effect remedies for noncompliance requiring notice and an opportunity for an administrative hearing;

(b) Grant waivers of the general terms and conditions of the community development block grant agreement;

(c) Determine that an applicant lacks the legal capacity to assume or carry out environmental review responsibilities pursuant to section 104(g) of the Housing and community development Act of 1974 (42 U.S.C. 5304); and

(d) Make determinations of the eligibility of Indian Tribes and Alaska Native Villages (as defined in 24 CFR 571.3(o)) to participate in the Indian CDBG Program except that those officials designated in section A may make those determinations of eligibility that can be made from lists provided to them each fiscal year by the Assistant Secretary for Public and Indian Housing.

Section C. Authority To Redelegate

FONAP Administrators may redelegate the power and authority redelegated herein under section A.

Authority: the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); HOME Investment Partnerships Act (42 U.S.C. 12701 *et seq.*); Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301); and section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated, April 8, 1994.

Elaine M. Dudley,

Deputy Director for Headquarters Operations, ONAP.

[FR Doc. 94–11323 Filed 5–10–94; 8:45 am]

BILLING CODE 4210–33–M

Office of Public and Indian Housing

[Docket No. D–94–1062; FR–3663–D–01]

Order of Succession, Acting Assistant Secretary for Public and Indian Housing

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Order of succession.

SUMMARY: The Assistant Secretary for Public and Indian Housing for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to serve as Acting Assistant Secretary for Public and Indian Housing when, by reason of absence, disability or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4244, 451 7th Street, SW., Washington, DC 20410, (202) 708–0846. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Public and Indian Housing for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to serve as Acting Assistant Secretary for Public and Indian Housing when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office. The authorization to act under this Order is subject to the 120-day limitation of the Vacancies Act, 5 U.S.C. 3348, whereby a vacancy caused by death or resignation of an appointee, whose appointment is vested in the President by and with the advice and consent of the Senate, may be filled temporarily for not more than 120 days.

Accordingly, the Assistant Secretary for Public and Indian Housing designates the following order of succession:

Section A. Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Public and Indian Housing is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary, the following are hereby designated to serve as Acting Assistant Secretary for Public and Indian Housing:

(1) General Deputy Assistant Secretary for Public and Indian Housing.

(2) Deputy Assistant Secretary for the Office of Distressed and Troubled Housing.

(3) Director, Office of Construction, Rehabilitation and Maintenance.

(4) Director, Office of Assisted Housing.

(5) Director, Office of Native American Programs.

(6) Director, Office of Management and Policy.

(7) Comptroller, Office of Public and Indian Housing Comptroller.

(8) Director, Office of Resident Initiatives.

(9) Director, Rental Assistance Division.

These officials shall serve as Acting Assistant Secretary for Public and Indian Housing under this order of succession in the order specified herein and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office. If all the officials designated in this order of succession are unable to serve as Acting Assistant Secretary for Public and Indian Housing by reason of absence, disability or vacancy in office, officials designated to serve as acting officials for these designated officials (designees) will serve in the same order of succession as their principals.

Authorization to serve as Acting Assistant Secretary for Public and Indian Housing shall not exceed 120 days pursuant to the Vacancies Act, 5 U.S.C. 3348.

Section B. Revocation of Order of Succession

The Order of Succession published in the **Federal Register** on April 2, 1990 at 55 FR 12291 is hereby revoked.

Authority: Sec. 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d).

Dated: April 15, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–11322 Filed 5–10–94; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–660–04–4120–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below and or by writing the Office of Management and Budget, Paperwork Reduction Projects (1004–34), Washington, DC 20503.

Title: Coal Management, 43 CFR Group 3400.

OMB Approval Number: 1004–0073.

Abstract: The Federal Coal Management Program regulations are located at 43 CFR Group 3400 and require applicants, lessees, licensees, and/or operators involved in operations for the discovery, testing, development, mining or processing of Federal coal to submit information to the Bureau of Land Management. The information required is needed to allow the authorized officer, on behalf of the Federal Government, to: gather data relevant to the extent and qualities of the public coal resource and to the environmental impacts of coal leasing and development; manage the leasing and development of coal in the public interest; determine the qualifications of prospective lessees and licensees to mine; properly administer the statutes applicable to coal mining, production, resource recovery and protection, operations, and exploration on Federal leases and licenses; ensure that lessees comply with applicable statutes, regulations, and policies; and ensure that accurate records are kept of all Federal coal produced.

No revisions to the regulations are being proposed at this time. Information requirements are located in several sections of the regulations. All requirements are consistent with the Secretary of the Interior's authority to: Manage federally owned coal through leasing or exchange; oversee exploration, development, production, resource recovery and protection, diligent development, continued operation, preparation, handling, and certain abandonment operations on Federal coal lands; and require that coal mining operations are conducted in an environmentally sound manner. In many cases, a specific form is not required to collect information as that information is generated as part of routine industry practice. In these cases, information requirements in the regulations are acceptable in any form which meets the regulatory specifications. The obligation to respond is generally required to obtain a benefit, although it is mandatory for some requirements once the lease or license is obtained.

Failure to collect the information covered by this information collection would result in violations of statute and in lack of knowledge about Federal coal resources and would reduce the effectiveness of the program in meeting policy and statutory objectives.

Frequency: On occasion, quarterly, semiannually, and annually.

Description of Respondents: Coal lessees, licensees, operators, applicants, and members of the general public.

Estimated completion time: On average, 19 hours.

Annual Responses: 1,299.

Annual Burden Hours: 24,737.

Bureau Clearance Officer: Dorothy Chambers, Bureau of Land Management (873), Washington, DC 20240, (202) 452–5012.

Dated: March 22, 1994.

Adam A. Sokoloski,

Acting Assistant Director, Energy and Mineral Resources.

[FR Doc. 94–11461 Filed 5–10–94; 8:45 am]

BILLING CODE 4310–84–M

[CA–060–04–7122–09–6514]

American Girl Project, Dro Cruz Operation, CA;

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) has prepared a draft Environmental Impact Statement for the Oro Cruz Operation of the American Girl Project, a proposed gold mining operation on public lands in Imperial County, California.

DATES: Comments on the Draft Environmental Impact Statement must be postmarked no later than Tuesday, June 28, 1994.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, El Centro Resource Area, 1661 South Fourth Street, El Centro, California 92243, ATTN: Thomas Zale.

FOR FURTHER INFORMATION CONTACT: Thomas Zale, Multi-Resource Staff Chief, telephone (619) 353–1060.

PUBLIC HEARINGS: No hearings are presently planned. However, should public demand warrant, a hearing would be held by the BLM.

SUPPLEMENTARY INFORMATION: The proposed action is a surface and underground mining project on unpatented lode and placer claims on public lands in Imperial County, California. About 2.5 million tons of ore and 8.5 million tons of waste rock

would be mined from two open pits, the Cross Pit and the Queen Pit, during an estimated two year period. The Queen Pit would be backfilled upon completion of mining. Underground mining would begin in the Cross Pit and be conducted concurrently with surface mining. One-half million tons of ore and 65,000 tons of waste rock would be produced during a three year period. Ore produced by both surface and underground mining would be transported 2.5 miles by haul trucks to existing mill and heap leach facilities in American Girl Canyon via a proposed haul road. Waste rock would be disposed of in the Queen Pit, and on one large and three smaller waste rock dumps. Aggregate for use in stabilizing underground mine workings would be hauled from a quarry near the existing American Girl Canyon facilities to the Cross Pit along the same haul road. Surface disturbance resulting from the proposed action would total 191 acres.

Dated: April 4, 1994.

G. Ben Koski,

Area Manager.

[FR Doc. 94–11266 Filed 5–10–94; 8:45 am]

BILLING CODE 4310–40–M

[NV–040–4191–03; 4–00154]

Intent To Prepare an Environmental Impact Statement for the Bald Mountain/Alligator Ridge Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and scoping.

SUMMARY: The Bureau of Land Management (BLM) will be directing the preparation of an Environmental Impact Statement (EIS) for the proposed Bald Mountain/Alligator Ridge Project in White Pine County, Nevada. This EIS will be prepared by contract and funded by the proponent, Placer Dome U.S. The BLM invites comments and suggestions on the scope of the analysis.

DATES: Meetings to brief the public on the scope of the proposed project and to receive comments are scheduled for May 31 and June 1 and 2, 1994. All meetings will be held from 7 to 9 p.m. each evening.

Written comments on the Plan of Operations (proposed action) and the scope of the EIS will be accepted until June 17, 1994.

ADDRESSES: Scoping comments are to be sent to: District Manager, HC 33 Box 33500, Ely, NV 89301 Attn: Dan Netcher, EIS Team Leader.

Scoping meetings will be held at the following locations: May 31—Ely BLM District Office, 702 Industrial Way, Ely, NV; June 1—Elko BLM District Office, 3900 E. Idaho St., Elko, NV; June 2—Holiday Inn, 6th Street, Reno, NV.

FOR FURTHER INFORMATION CONTACT: Dan Netcher, EIS Team Leader, at the above Ely BLM District Office address or telephone (702) 289–4865.

SUPPLEMENTARY INFORMATION: Placer Domer U.S. has submitted to the Ely BLM District Office a Plan of Operations (POO). The POO describes proposed mining operations, including required access, for an area in White Pine County approximately 60 miles northwest of Ely, Nevada. The Buck and Bald Mining District has been active since 1984 with mineral exploration of the area and open pit/heap leach gold mining. There are currently six separate mining operations and five are operated by Placer Domer U.S. The other is Western State's White Pine Gold Mine at the northern end of the mining district. Placer Dome U.S. is proposing to expand their operation at Bald Mountain Mine by opening the Sage flats area and by establishing a new processing plant and heap/tailings facility. The Sage Flat area would be mined and ore transported to Placer Dome's current heap leach facility at the Bald Mountain Mine. The new heap/tailing facility operation would process 2.5 million tons per year and would consist of a new crushing facilities and tailing disposal area. The company also proposes to open a new open pit mine and heap leach facility in the Mooney Basin. This operation would consist of seven pits and would mine ore at a rate of 1.5 million tons per year. These modifications to the mine plan and new mine operations would allow Placer Dome U.S. to operate for seven more years.

The issues expected to be analyzed in the EIS are impacts to: Surface and groundwater, threatened and endangered species, cultural resources, wildlife, wild horses and mine reclamation. Cumulative impacts for the mining district will be analyzed in detail and will cover the complete mining district.

Dated: May 4, 1994.

Thomas V. Leshendok,

Acting Associate State Director, Nevada.

[FR Doc. 94–11348 Filed 5–10–94; 8:45 am]

BILLING CODE 4310–HC–M

[WY–920–41–5700; WYW126771]

Proposed Reinstatement of Terminated Oil and Gas Lease

April 28, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW126771 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW126771 effective May 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94–11317 Filed 5–10–94; 8:45 am]

BILLING CODE 4310–22–M

[ES–030–3–4210–05]

Realty Action: Sale of Public Land in Stone County, MO

ACTION: Realty Action Color-of-Title Sale MOES–044198.

SUMMARY: The following land has been found suitable for sale under authority of the Color-of-Title Act of December 22, 1928, as amended July 28, 1953, 43 U.S.C. 1068, 1068a (1982), as a claim of Class I at the estimated fair market value less equities presented by the applicant. The land will not be offered for sale until at least 60 days after the date of this notice.

Fifth Principal Meridian

T. 21 N., R. 22 W.,
Sec. 8, SENW.
Containing 40 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Michael Ussery. The mineral interest will not be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests under Sec. 209 of the Federal Land

Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713).

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203.

DATES: For a period of 45 days from the date of publication of this notice, in the **Federal Register**, interested parties may submit comments to the District Manager, Milwaukee District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this sale is available at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203 or by calling Larry Johnson at 414–297–4413.

Dated: April 29, 1994.

Chris Hanson,

Acting District Manager.

[FR Doc. 94–11477 Filed 5–10–94; 8:45 am]

BILLING CODE 4310–GJ–M

[OR 50607, 50608, 50609; OR–080–04–4210–05: GP4–158]

Real Action; Proposed Direct Sale

May 2, 1994.

The following described public lands have been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willimette Meridian, Oregon

T. 11 S., R. 7 W.,
Sec. 14, Lot 5, (Parcel A),
Sec. 23, Lot 1, (Parcel B),
Sec. 23, Lot 2, (Parcel C).

The above-described parcels aggregate 1.53 acre in Benton County.

The parcels will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcels have not yet been determined. Anyone interested in knowing the values may request this information from the address shown below.

The above-described lands are hereby segregated from appropriation under the public laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcels' relatively small size and lack of physical or legal access, their best use is to merge them with the adjoining ownerships. The sale is consistent with the Westside Management Framework Plan and the public interest will be served by offering these parcels for sale.

The parcels are being offered only to the following individuals: Parcel A to Daniel L. Marshall, contract purchaser, and Judith A. Heintz, aka Judith A. Fullen, fee owner of Tax Lot 1100, Map 11 7 14; Parcel B to Beverly Clair, fee owner of Tax Lot 201, Pam 11 7 23; and Parcel C to Jerry L. and Patsy M. Boyd, fee owners of Tax Lot 603, Map 11 7 23. Use of the direct sale procedures authorized under 43 CFR 2711.3–3, will avoid inappropriate land ownership patterns and would recognize equities of the individuals involved.

The terms, conditions, and reservations applicable to the sale are as follows:

1. The above-named individuals will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than the appraised value of the parcel to be sold.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. The above-named individuals must include with their bid a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

3. The conveyance documents will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Alsea Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

John H. Mears,

Alsea Area Manager.

[FR Doc. 94–11457 Filed 5–10–94; 8:45 am]

BILING CODE 4310–33–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 5, PRT–697823.

The applicant requests an amendment to their current permit to include take activities for small whorled pogonia (*Isotria medeoloides*) for the purpose of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 2, PRT–676811.

The applicant requests an amendment to their current permit to include take activities for Louisiana black bear (*Ursus americanus luteolus*) and Harperella (*Ptilimnium nodosum*) for the purpose of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

Applicant: John Beers, Ft. Lauderdale, FL, PRT–788447.

The applicant requests a permit to purchase in interstate commerce three Indian monitors (*Varanus bengalensis*) from Danny Gorman, Levittown, NY, for the purpose of enhancement of propagation and survival of the species through breeding.

Applicant: University of Florida, College of Veterinary Medicine, Gainesville, FL, PRT–789854.

The applicant requests a permit to reexport a Galapagos tortoise (*Geochelone elephantopus*) to the Galapagos Islands, Ecuador, for the purpose of enhancement of propagation or survival of the species. This animal had been imported for emergency medical treatment and is being returned

to the wild following treatment and rehabilitation.

Applicant: George B. Hubbard, Jr., Columbus, GA, PRT–789661.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (Damaliscus dorcas dorcas) culled from the captive herd maintained by the Ciskei Government, the Tsolwana Game Reserve, Tarkastad, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Oakhill Center for Rare and Endangered, Species, Oklahoma City, OK, PRT–789591.

The applicant requests a permit to import one captive-bred female Amur leopard (*Panthera pardus orientalis*) from the Moskovskii Zoologicheskii Park, Moscow, Russia, for the purpose of enhancement of propagation and survival of the species through breeding.

Applicant: Levi Britton, Emigrant, MT, PRT–786031.

The applicant requests a permit to import one surplus captive-bred male woods bison (*Bison bison athabascae*) from the Willow Hollow Game Ranch, Turtleford, Saskatuawan, Canada, to be culled during a sport-hunt and to then sell the hide and horns in interstate commerce, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Emergency Exemption; Issuance

On May 2, 1994, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–789799) to the University of Florida, College of Veterinary Medicine to import one Galapagos tortoise (*Geochelone elephantopus*) from the Galapagos Islands, Ecuador. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of this tortoise existed and that no reasonable alternative was available to the applicant. The tortoise required life-saving emergency surgery which could not be performed on the Galapagos Islands nor in Ecuador

Dated: May 5, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–11315 Filed 5–10–94; 8:45 am]

BILLING CODE 4310–55–P

Notice of Availability of a Draft Revised Recovery Plan for the Green Pitcher Plant for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for the green pitcher plant (*Sarracenia oreophila*). Populations are known to occur in northeast Alabama (Cherokee, DeKalb, Etowah, Jackson, and Marshall Counties), north Georgia (Towns County), and southwest North Carolina (Clay County). A historical record exists for Tennessee. Habitat for the green pitcher plant varies somewhat with populations located in moist upland areas and others along boggy, sandy stream edges. With the exception of a few sites on State park land, populations occur on privately owned lands. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 1, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review a draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Carry Norquist at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment to provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is the green pitcher plant (*Sarracenia oreophila*). This carnivorous plant occurs in moist upland areas and along boggy, sandy stream edges of northeastern Alabama, north Georgia, and southwest North Carolina. The green pitcher plant was listed as endangered in 1979 due to its limited distribution, and loss or decline in populations due to agricultural conversion, increased rural residential development, encroachment by woody plants due to hydrological alterations and fire suppression, and commercial and amateur collecting.

The objective of this proposed plan is to delist the green pitcher plant. Delisting will be considered when a minimum of 18 viable populations, representing the diversity of habitats and the geographic range of the species, are protected and managed as necessary to ensure their continued existence. Actions needed to reach this goal include: (1) Protecting, managing, and monitoring populations, (2) surveying for new populations, (3) gathering additional baseline and hydrological information, (4) studying pollination biology and conducting genetic analyses of populations, (5) monitoring

transplant and reestablishment experiments, (6) preserving genetic stock, and (7) continuing public education efforts.

This Plan is the second revision of the original and is being submitted for technical and agency reviews. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 28, 1994.

Robert Bowker,

Field Supervisor.

[FR Doc. 94-11462 Filed 5-10-94; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-645 (Final)]

Calcium Aluminate Cement and Cement Clinker From France

Determination

On the basis of the record[1] developed in the subject investigation, the Commission unanimously determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from France of calcium aluminate cement and cement clinker, provided for in subheadings 2523.30.00 and 2523.10.00, respectively, of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 1, 1993, following a preliminary determination by the Department of Commerce that imports of calcium aluminate cement and cement clinker from France were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing notices in the **Federal Register** of December 22, 1993 (58 FR 67809) and the **Federal Register** of March 9, 1994 (59 FR 11088). The hearing was held in Washington, DC, on March 31, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 2, 1994. The views of the Commission are contained in USITC Publication 2772 (May 1994), entitled "Certain Calcium Aluminate Cement and Cement Clinker from France: Investigation No. 2772 (Final)."

Issued: May 6, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-11478 Filed 5-10-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-362]

Certain Methods of Assembling Plastic Ball Valves and Components Thereof; Commission Determination Not To Review an Initial Determination Terminating the Investigation as to Two Respondents on the Basis of Settlement Agreements and Granting Complainants' motion To Withdraw the Complaint as to the Only Remaining Respondents; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ALJ granted the joint motion of complainants Nordstrom Valves, Inc. ("Nordstrom") and Measurement and Flow Control Holding Co., Inc. (MF&C) to terminate respondents Natural Gas Products Co. ("NGPC") and Friatec AG Keramik und Kunststoffwerke ("Friatec") on the basis of a settlement agreement. The ALJ also granted the motion of Nordstrom and MF&C to withdraw their complaint against the only remaining respondents, MT Deason, Inc. ("MTD") and Power and Process, Inc. ("P&P").

ADDRESSES: Copies of the nonconfidential ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: On November 8, 1993, complainants Nordstrom and MF&C filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain plastic ball valves and components thereof which are allegedly covered by four claims of U.S. Letters Patent 4,047,275, which is owned by MF&C and licensed to Nordstrom. The Commission instituted an investigation of the complaint on December 16, 1993, 58 F.R. 65731.

On January 28, 1994, complainants and respondents NGPC and Friatec filed a joint motion to terminate the investigation based on a settlement agreement. On the same date, complainants filed a motion to withdraw the complaint as to the final respondents, MTD and P&P. Both motions were supported by the Commission investigative attorney. On April 4, 1994, the ALJ issued an ID granting both motions. No petitions for review, or agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

Issued: May 5, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-11476 Filed 5-10-94; 8:45 am]

BILLING CODE 7020-02-P

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Lynn Bragg did not participate.

[Investigation No. 337-TA-354]

Certain Tape Dispensers; Issuance of General Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: James M. Lyons, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3094.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.58).

Minnesota Mining and Manufacturing Corporation ("3M") filed an amended complaint on June 30, 1993, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging that three respondents: (1) Acurite Industries Corp.; (2) Fancy International (HK) Ltd.; and (3) Charles Leonard, Inc., had violated section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain tape dispensers. The tape dispensers are alleged to infringe a design patent, U.S. Letters Patent Des. 289,180 (the '180 patent). The Commission instituted this investigation by notice published in the **Federal Register** on July 21, 1993, at 58 FR 39036. The Commission terminated Fancy International as a respondent and added Hoi Fung Industrial Company, Safina Office Products, and Shiang Shin Trading Company as respondents by notice published on November 10, 1993, at 58 FR 59735. The notice of investigation was further amended on January 12, 1994, after a request by 3M to terminate respondent Shiang Shin Trading Company and to change the name of respondent Safina Office Products to Shiang Shin International Inc. d/b/a Safina Office Products. 59 FR 1762-1763.

On December 23, 1993, the presiding administrative law judge (ALJ) issued a final initial determination ("ID") finding that there was a violation of section 337. The ALJ found that U.S. Letters Patent Des. 289,180 is infringed and that a domestic industry exists with respect to the patent claim in issue. On January 21, 1994, the Commission determined not to review the ID, which thereby became the determination of the Commission. The Commission also requested written submissions concerning the issues of remedy, the public interest, and bonding. 59 FR 3868-3869 (January 27, 1994).

On April 5, 1994, the Commission made its determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a general exclusion order prohibiting the importation of infringing tape dispensers. Finally, the Commission determined that the public interest factors enumerated in 19 U.S.C. 1337 (d), (f), and (g) do not preclude the issuance of the aforementioned relief, and that the bond during the Presidential review period shall be in the amount of 220 percent of the entered value of the infringing tape dispensers.

Copies of the Commission order, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: May 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-11475 Filed 5-10-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 731-TA-650 (Final)]

Nitromethane From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from the People's Republic of China (China) of nitromethane, provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 4, 1993, following a preliminary determination by the Department of Commerce that imports of nitromethane from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 1, 1993 (58 FR 63392). The hearing was held in Washington, DC, on March 29, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 6, 1994. The views of the Commission are contained in USITC Publication 2773 (May 1994), entitled "Nitromethane from the People's Republic of China: Investigation No. 731-TA-650 (Final)."

Issued: May 5, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-11474 Filed 5-10-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation 337-TA-360]

In the Matter of Certain Devices for Connecting Computers via Telephone Lines; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Good Way Industrial Co. Ltd., Caltechnology International Ltd., and Shiunn Yang

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford dissenting and Commissioner Bragg not participating.

Enterprises Co., Ltd., Tremon Enterprises Co., Ltd., and Taiwan Techtron Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on May 5, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: May 5, 1994

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11473 Filed 5–10–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–315]

Certain Plastic Encapsulated Integrated Circuits; Designation of Additional Commission Investigative Attorney; Enforcement Proceeding

Notice is hereby given that, as of this date, Thomas L. Jarvis, Esq. and Mary Jane Boswell, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Thomas L. Jarvis, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: April 29, 1994.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 94–11472 Filed 5–10–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–360]

Certain Devices for Connecting Computers via Telephone Lines; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Focus Enhancements, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on May 3, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: May 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11471 Filed 5–10–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–290 (SUB-NO. 133X), VIRGINIA & SOUTHWESTERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN BRISTOL, TENNESSEE AND BRISTOL, VIRGINIA. EA available 5/6/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–1 (SUB-NO. 252X), CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY—ABANDONMENT EXEMPTION—BETWEEN CEDAR LAKE IN WESTERN MINNEAPOLIS AND HOPKINS, HENNEPIN COUNTY, MINNESOTA. EA available 5/2/94.

AB–55 (SUB-NO. 481X), CSX TRANSPORTATION, INC.—ABANDONMENT IN PIKE COUNTY, KY. EA available 5/6/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–11445 Filed 5–10–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposal consent decree in *United States* v. *Association of Apartment Owners of Harbor Lights*, Civil Action No. 94–00304–DAE, was lodged on April 25, 1994, with the United States District Court for the District of Hawaii. The Complaint in this Act, brought under section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), alleged that the defendant committed violations of the asbestos NESHAP notification and work practice requirements of 40 CFR part 61, subpart M, during the removal of asbestos—containing acoustical ceiling material at its condominium complex.

The proposed consent decree requires the defendant to pay a civil penalty of $40,000; to inspect and sample facilities to identify asbestos before commencing a renovation or demolition operation; and, when hiring workers for asbestos-related projects, to employ only persons who have successfully completed an EPA–approved training course.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent degree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Association of Apartment Owners of Harbor Lights*, DOJ Ref. #90–5–2–1–1662.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Hawaii, Room C–242, U.S. Courthouse, 300 Ala Moana Blvd., Honolulu, Hawaii; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Crudden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–11458 Filed 5–10–94; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 86–94]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service, Department of Justice, proposes to modify the following system of records:

"Alien Status Verification Index, Justice/INS–009."

Routine uses disclosures A. and B. have been rewritten as one routine use. The revised routine use, designated as routine use A., clarifies (1) that access/verification for any of the purposes identified may be accomplished either manually or via automated means by any of the recipients identified and (2) that the information may be disclosed—for the same purposes—to a contractor acting on behalf of the agency.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on any new use or intended use of information in the system. The Office of Management and Budget (OMB) requires a 40-day period in which to conclude its review of the proposed changes.

Therefore, please submit any comments by June 10, 1994. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (room 850, WCTR Building).

Dated: May 5, 1994.

Michael J. Roper,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–009

SYSTEM NAME:

Alien Status Verification Index.

SYSTEM LOCATION:

Immigration and Naturalization Service (INS), 425 I Street NW., Washington, DC 20536.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by provisions of the immigration and nationality laws of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an index of aliens and other persons on whom INS has a record as an applicant, petitioner, beneficiary, or possible violator of the Immigration and Nationality Act. Records include index and file locator data such as last and first name, alien registration number (or "A-file" number), date and place of birth, social security account number, date coded status transaction data and immigration status classification, verification number, and an employment eligibility statement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 101 and 121 of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1360, 8 U.S.C. 1324a, 20 U.S.C. 1091, 42 U.S.C. 1436a, 42 U.S.C. 1320b–7, and Executive Order 12781.

PURPOSE:

This system of records is used to verify the alien's immigrant, nonimmigrant, and/or eligibility status for any purpose consistent with INS statutory responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. *To a Federal, State, or local government agency, or to a contractor acting on its behalf, to the extent that such disclosure is necessary to enable these agencies/contractors to make decisions concerning the (1) hiring or retention of an employee; (2) issuance of a security clearance; (3) reporting of an investigation of an employee; (4) letting of a contract; (5) issuance of a license or grant; or (6) determination of eligibility for a Federal program or other benefit. Such access may be via a system in which the recipient performs its own automated verification of the requisite information for deciding any of the above. INS will assign appropriate access codes for remote access through secured terminals to agencies which are to perform their own automated verification. Records may also be disclosed to these agencies, or contractors operating on their behalf, for*

use in computer matching programs for the purpose of verifying an alien's immigrant status or non-immigrant status and/or eligibility for the purpose of making Federal program benefit eligibility determinations.

B. *To employers for verifying the employment eligibility of aliens to work in the United States in compliance with employer sanctions of the 1986 Immigration Reform and Control Act. Employers are assigned secure access codes and will have access through touch-tone telephone and/or point of sale equipment.*

C. *To the private contractor for maintenance and for other administrative support operations (e.g., preparing for INS management reimbursable cost reports etc. based on user access), to the extent necessary to perform such contract duties.*

D. To other Federal, State, or local government agencies for the purpose of verifying information in conjunction with the conduct of a national intelligence and security investigation or for criminal or civil law enforcement purposes.

E. To the news media and the public pursuant to 23 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member of staff request the information on behalf of and at the request of the individual who is the subject of the record.

G. To the National Archives and Records Administration (NARA) and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic disk and tape.

RETRIEVABILITY:

Records are indexed and retrievable by name and date and place of birth, or by name and social security account number, by name and A-file number.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice *Orders governing security of automated records and Privacy Act systems of records.* Access. is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

A request for disposition authority is pending the approval of NARA.

SYSTEM MANAGER AND ADDRESS:

The *Assistant Commissioner, Records Systems Division,* Immigration and Naturalization Service, 425 I Street NW., Washington, DC., is the sole manager of the system.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager listed above.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record from this system shall be in writing. If a request for access is made by mail the envelope and letter shall be clearly marked "Privacy Act Request." The requester shall include the name, date and place of birth of the person whose record is sought and if known the alien file number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct *his or her* request to the System Manager or to the INS office that maintains the *file.* The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is taken from Department of State and INS applications and reports on the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–11300 Filed 5–10–94; 8:45 am]

BILLING CODE 4410–10–M

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated December 21, 1993, and published in the **Federal Register** on December 28, 1993, (58 FR 68664), Orpharm, Inc., 728 West 19th Street, Houston, Texas 77008, made application to the Drug Enforcment Administration to be registered as a bulk manufacturer of Methadone (9250), a basic class of controlled substance listed in Schedule II.

Comments were received, however, no written request for a hearing exists if the DEA can determine that Orpharm will manufacture methadone to process LAAM. The DEA has determined that this is the case. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is approved.

Dated: May 4, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–11331 Filed 5–10–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 23, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 23, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment

Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 25th day of April, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
International Paper Co. (UPIU)	Presque Isle, ME	4/25/94	3/30/94	29,789	Corrugated Containers (Cardboard Boxes).
Hunt Wesson, Inc. (UF&CW)	Perrysburg, OH	4/25/94	4/15/94	29,790	Tomato Sauce, BBQ Sauce and Ketchup.
T.K. Valve & Manufacturing (WKRS)	Hammond, LA	4/25/94	4/12/94	29,791	Ball Valves & Components.
Allied Cementing Co. (WKRS)	Russell, KS	4/25/94	4/06/94	29,792	Cementing of Oil Wells.
Dosimeter Corp of America (CO)	Cincinnati, OH	4/25/94	3/12/94	29,793	Radiation Detectors.
Endicott Forging & Mfg. (CO)	Endicott, NY	4/25/94	3/23/94	29,794	Forgings.
Freeport Sulphur Co. (WKRS)	New Orleans, LA	4/25/94	4/11/94	29,795	Exploration and Drilling Sulphur.
Kinston Shirt Co. (WKRS)	Kinston, NC	4/25/94	4/13/94	29,796	Men's & Boy's Shirts.
Lyons Falls Pulp & Paper (UPIU)	Lyons Falls, NY	4/25/94	4/13/94	29,797	Printing Paper.
Permian Tank & Manufacturing, Inc. (CO).	Odessa, TX	4/25/94	3/28/94	29,798	Steel Oil Storage Tanks.
M–I Drilling Fluids Co. (CO)	Anchorage, AK	4/25/94	4/11/94	29,799	Install Drilling Fluids.
Allied Signal Corp. (IAMAW)	South Montrose, PA	4/25/94	3/01/94	29,800	Defense Products.
Auburntown Industries, Inc. (WKRS)	Auburntown, TN	4/25/94	4/13/94	29,801	Ladies' Blouses & Men's Shirts.
Western Geophysical Co. (WKRS)	Houston, TX	4/25/94	4/08/94	29,802	Seismic Exploration For Oil & Gas.
Adcor Drilling, Inc. (WKRS)	Williston, ND	4/25/94	4/10/94	29,803	Drilling of Oil Wells.
Brown Shoe Co. (CO)	Pocahontas, AR	4/25/94	4/05/94	29,804	Ladies Shoes.
Radform Tool Co. (WKRS)	East McKeesport, PA	4/25/94	4/07/94	29,805	Nuclear Power Components.
Miller Redwood (WKRS)	Crescent City, CA	4/25/94	4/12/94	29,806	Redwood, Lumber and Chips.
Pennant/Signal Well Service (WKRS)	Sidney, MT	4/25/94	4/11/94	29,807	Oil Wells Services.
Smith System Mfg. (IAMAW)	Princeton, MN	4/25/94	1/14/94	29,808	Office Accessories.

[FR Doc. 94–11454 Filed 5–10–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,255]

Lamb-Grays Harbor Company Hoquiam, WA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Lamb-Grays Harbor Company, Hoquiam, Washington, The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,255; Lamb-Grays Harbor Company Hoquiam, Washington (April 25, 1994)

Signed at Washington, DC this 3rd day of May, 1994.

Violet L. Thompson,

Deputy Director, Office of Adjustment Assistance.

[FR Doc. 94–11453 Filed 5–10–94; 8:45 am]

BILLING CODE 4510–30–M

[SGA No. DAA 94–007]

Job Training Partnership Act: Business Partnership Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), under Title IV of the Job Training Partnership Act (JTPA), is announcing the availability of demonstration funds under the Business Partnership Grants program.

Grants will be awarded to eligile non-profit organizations to support the participation and involvement of the private sector in specific new initiatives involving national employment and training programs. These initiatives are (1) School-to-Work Programs which are sponsored jointly by the Departments of Labor and Education; (2) Skill Standards Initiatives and (3) Reemployment Program Strategy, which includes both Worker Adjustment Services and One-Stop Career Centers.

Multiple grant awards may be made in each category. The estimated total amount of funds available under this solicitation is $1.8 million for all categories. Awards will be for a twelve month period with up to two option years.

Applicants must identify which of the above categories they are applying for on the face sheet of their application. All information and forms needed to apply for funding under this solicitation are included in this announcement.

DATES: Applications for grant awards will be accepted commencing May 11, 1994. The closing date for receipt of applications shall be June 15, 1994, at 2 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Ms. Reda Harrison, Reference: SGA No. DAA 94–007, 200 Constitution Avenue, NW., room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Reda Harrison, Division of Acquisition and Assistance, Telephone:

(202) 219–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of four parts: Part I—Background, Part II—Application Process, Part III—Statement of Work, and Part IV—Evaluation Criteria.

Part I—Background

The Department of Labor's Employment and Training Administration (ETA), in collaboration with other Federal agencies, has undertaken a series of initiatives: (1) To enhance the effectiveness of and to better coordinate the services provided through a variety of programs and (2) to enhance the competitiveness of the American worker. An important aspect of these initiatives is to elicit the participation and involvement of private sector firms both by a direct approach to major firms and by developing strategies and materials that will provide assistance to State and local officials in dealing with small and medium-size employers.

A key tenet of this effort is that the delivery of programs should be customer-focused. To accomplish this, there is a need to elicit direct input from a broad range of employers on the services available through various ETA programs and to obtain detailed views of these private sector "customers" on ways to ultimately improve services to employment and training clients.

It is important for potential grantees to recognize that the support requested depends to a substantial degree on the enactment of legislation proposed or to be proposed to the Congress. While the Department favors the enactment of such legislation, there is no assurance that such bills will be enacted or that there will not be substantial revisions in the bills enacted into law.

Part II—Application Process

A. Eligible Applicants

Awards under this Solicitation will be made to non-profit organizations.

B. Submission of Proposals

An original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts.

Part I shall contain the cost proposal, consisting of the following items: Standard Form (SF) 424, "Application for Federal Assistance" (Appendix No. 1) and SF 424A, "Budget" (Appendix No. 2). Also, the budget shall include on a separate page(s) a detailed cost analysis of each line item in the budget.

Part II shall contain a technical proposal that demonstrates the applicant's capabilities in accordance with the Statement of Work contained in this announcement. Applicants are strongly encouraged to submit a technical proposal of less than one hundred fifty (150) pages in length (exclusive of appendices) which sets forth the applicant's explanation of how it proposes to accomplish the elements described in the Statement of Work.

No cost data or reference to price shall be included in the technical proposal. In order to assist applicants in preparing their proposals and to facilitate the expeditious evaluation by the review panel, proposals should be organized and presented in the same sequential order as the Evaluation Criteria in Part IV of this announcement.

C. Hand-Delivered Proposals

Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand-delivered, they must be received at the designate place by 2 p.m., Eastern Time by June 15, 1994. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed by the 15th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working day prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal, shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

E. Withdrawal of Proposals

Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an applicant or an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

F. Period of Performance

The period of performance will be 12 months from the date of execution.

G. Funding

DOL has set aside up to $1.8 million to be disbursed for all categories.

H. Option to Extend

Based on the availability of funds, effective program operation, and the needs of the Department, the grants may be extended for up to two option years.

Part III—Statement of Work

Each of the following initiatives has a specific set of parameters, activities, and tasks:

A. School-to-Work

The United States is the only industrialized nation that lacks a comprehensive system to help its youth acquire the knowledge, skills and information about the labor market necessary to make an effective transition from school to career-oriented work. Three-fourths of America's high school students enter the workforce without college degrees.

Many do not possess the basic academic and occupational skills necessary for the workplace or to pursue further education.

The Departments of Labor and Education have made the development of a school-to-work system a high priority. The "School-to-Work Opportunities Initiative" builds on earlier work of the two Departments as well as exemplary programs at the State and local levels. The "School-to-Work Opportunities Act of 1994" was developed by the Departments of Labor and Education and was signed into law by the President on May 4, 1994.

This legislation provides a broad framework for effective school-to-work

Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 25th day of April, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

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[FR Doc. 94-11454 Filed 5-10-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,255]

Lamb-Grays Harbor Company Hoquiam, WA; Dismissal of Application for Reconsideration

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Violet L. Thompson,

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[SGA No. DAA 94-007]

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DOL has set aside up to $1.8 million to be disbursed for all categories.

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Many do not possess the basic academic and occupational skills necessary for the workplace or to pursue further education.

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This legislation provides a broad framework for effective school-to-work

strategies and seed money for statewide and local implementation of school-to-work systems. During Fiscal Year 1994, the Departments are using pre-existing legislative authority to begin developmental activities.

As envisioned, States and localities will have considerable flexibility to design and implement programs which fit their individual circumstances and unique needs. However all programs will share some basic components:

1. *Work-based learning* that provides a planned program of job training and experience, paid work experience, workplace mentoring and instruction in workplace competencies and in a broad variety of elements of an industry.

2. *School-based learning* that provides career exploration and career counseling, instruction in a career major (selected no later than the 11th grade), a program of study that is based on high academic and skill standards and typically involves at least one year of post secondary education, and periodic evaluations to identify students' academic strengths and weaknesses.

3. *Connecting Activities* that coordinate involvement of employers, schools and students, matching students and work-based learning opportunities, and training teachers, mentors, and counselors.

Students, upon successful completion, will receive a high school diplomas, or its equivalent; a certificate or diploma from a post-secondary institution, if appropriate; and a skill certificate.

At the State level, the Governor, the chief state school officials and state agency officials responsible for job training and employment, economic development, post secondary education and other appropriate offices will collaborate in the planning and development of the state school to work system. At the local level, partnerships that consist of employers, secondary and post secondary education institutions, labor organizations and other local community and business leaders will design and administer school-to-work programs.

The Departments of Labor and Education are supporting State and local developmental and implementation activities by providing grants and through research, evaluation, technical assistance and other support activities. For those States who are ready to move beyond developmental activities, the two Departments are making available a limited number of larger, multi-year implementation grants. States will be selected to receive these grants through a competitive process with an anticipated award date of July 1994.

Employers must play a critical role in designing and implementing school to work strategies. Successful programs will require the active involvement of the business community. Employers, in partnership with labor, must define the skill requirements for jobs, participate equally in the governance of the program, offer quality learning experiences for the students at the worksite, and provide jobs for students and graduates.

Thus, development of an effective school-to-work "system" requires the active involvement of a substantial portion of this nation's business community. Accomplishing this objective is a daunting and challenging task. Employers must be convinced that it is in their best interest to participate in such arrangements.

Employers who agree to participate may need assistance in developing the capacity to transform their workplaces into quality learning environments a well as assuming other partnership roles. Experience to date suggests that a multitude of approaches are needed to effectively mobilize this nation's business community.

State Officials involved in school-to-work transition have indicated that this is an area where federal assistance is needed. Accordingly, applicants interested in this portion of the solicitation shall explain how they intend to accomplish the following objectives:

1. Create awareness among the business community about the "School-to-Work Opportunities Initiative" in general and, more specifically the business role in developing and administering the system;

2. Build demand among the business community to participate in local partnerships;

3. Develop capacity of business to participate as an active partner in local school-to-work opportunities program;

4. Broker the formation of coalitions of business and of local partnerships among business, education, labor (where appropriate) and community organizations to develop and administer local school-to-work opportunities programs.

Provide direct assistance to State and local programs in achieving employer involvement and assistance in developing effective local programs. This may entail training of State and local staff, on-site involvement to obtain major employer representation and participation in the local School-to-Work Program and other assistance as requested by local or state programs.

States and localities will be organizing their implementation of school-to-work systems around broad industry/occupational clusters. Accordingly, the Department is seeking to complement State and local effort by providing business related assistance focused around broad industry clusters.

Thus, the Department is seeking applicants that can organize their efforts around broad industry groups that would at least include: Manufacturing, service, retail and wholesale trade, and finance, insurance and real estate. Within each sector, applicants must be able to demonstrate their ability to enlist the support of both leading edge companies and small and mid-size firms.

In addition, applicants must indicate the major occupational clusters within each industry sector that the organization believes offers the greatest potential for inclusion in school-to-work transition opportunities programs. The Department is seeking to work closely with the applicant(s) that is selected for these partnership activities, but not to prescribe the methods the applicant will employ to accomplish the objectives laid out above. The Department recognizes that those applicants which have demonstrated the capability to deliver services have established methods and processes for reaching and supporting the employer community.

Each applicant proposal for this section of the Statement of Work must include:

1. A comprehensive implementation plan for providing targeted assistance to States as they move forward to implement their school-to-work transition systems. Such plan must have specific actions what will be accomplished within the grant period.

2. A brief description of all proposed technical assistance guides, videos, promotional materials, newsletters and other materials and publications developed under this grant. Complete drafts of these materials are to be submitted for review and, as necessary revision prior to publication/release.

3. A listing of significant events sponsored by the organization that relates to the objectives of this grant, regardless of whether this is the primary purpose of the event.

4. A plan for assessment of the incentives, both financial and nonfinancial, that will be required to recruit their members participation in local school-to-work opportunities programs, on a large-scale basis.

B. Skill Standards

The Department wants to promote the active involvement of business organizations in the development of national voluntary skill standards. Once

established these standards are designed to meet the needs of the current and potential workforce, from high school dropouts to graduates of school-to-work. programs, from dislocated workers to workers progressing along a career path. Business participation and leadership in these activities is critical to achieving our major objectives of a common language of skill classification and a portable credential.

Therefore, proposals submitted in response to this section of the Statement of Work should include a strategy, implementation plan and timetable for the following elements:

1. *Marketing.* To include information sharing, promotion and generate interest among the business community, broadly defined, of activities in this area and informing workers of the benefits of the system for enhancing their ability to enter or reenter the workforce or move up in a career progression;

2. *Coalition Building.* To prepare the business community for participation in voluntary partnerships encourage by the National Skill Standards Board to be established under the GOALS 2000: Educate American Act (this would include stimulating business participation as well as courting business partnerships with representatives from the education and training community, State and local governments, community-based organizations and organized labor);

3. *Research.* To draw the linkage between high performance work organization, skill standards and competitiveness gains, and to examine the connection between the human resource requirements of ISO 9000 and the Malcolm Baldrige Award using skill standards as a tool.

C. Reemployment Program Activities

Each year more than one-fourth of the workforce move to new jobs either to advance careers or to rebound from a job loss. The Administration plans a major investment to help experienced workers move from one job to the next to equip workers with skills needed for the new jobs of the future.

Currently, over 60 Federal programs deliver job training and employment services to Americans—each with its own funding mechanisms, eligibility criteria and range of services. DOL/ETA presently administers six separate programs focused on dislocated workers: Economic Dislocation and Worker Adjustment Assistance, Defense Conversion Program, Defense Diversification Program, Clean Air Employment Transition Assistance, Trade Adjustment Assistance and North Atlantic Free Trade Act-Bridge.

Applicants seeking to submit a proposal for this portion of the solicitation shall include the following:

1. *One-Stop Career Centers.* Grantees will propose a strategy for developing effective local support for one-stop career centers and the local level governance approach to such centers. This will require the development of an approach to building business support for Workforce Investment Boards, where they are created and for training of both members of such boards and staff.

(a) The grantees will develop and introduce a strategic planning model to assist local areas on implementing effective governance of one stop career centers and the relationship of such centers to the needed services. This will include the dissemination of workforce investment principles and presentations to major employer organizations and their membership of these principles to obtain support and participation.

(b) Develop and disseminate, in consultation with ETA, models (or best practices) for implementing workforce Investment Boards, with specific emphasis on the relationship with existing structures such as Private Industry Councils or other existing local boards;

(c) Develop and provide methods to build capacity and/or orient board members to ensure success; and,

(d) Provide recommendations on staffing needs for such local bodies.

(2) *Worker Adjustment.* The Worker Adjustment initiative will require grantees, in consultation with ETA, to undertake research efforts and disseminate technical assistance and training materials to support worker adjustment services for experienced workers. Proposals shall include:

(a) Review of the delivery structure for delivery of rapid response assistance, how it is controlled, what role substate grantees play and "best practices" of effective Dislocated Worker Units.

(b) Examination of effective layoff aversion through rapid response and dissemination of what has been tried, what has worked, who does it and how much it costs.

(c) Technical assistance material on relocation opportunities for discrete groups of dislocated technical, professional and managerial workers. To what extent have organizations developed systems to match clusters of dislocated professionals with job openings in other areas and what can be undertaken to expand or enhance these efforts.

(d) Examination of various approaches and development of a specific approach for obtaining customer feedback (including participants, hiring employers and discharging employers) concerning their services offered and the timing of such services.

(e) Examination of the delivery structure for dislocated worker services—What organizations are substate grantees under Title III? How many are Title II administrative entities? How many use essentially the same process for dislocated workers as disadvantaged workers? What is the delivery structure for workers receiving services under TAA? What recommendations can be made for improving or restructuring the delivery of these services, especially under a comprehensive program approach?

PART IV—EVALUATION CRITERIA

Prospective offerors are advised that the selection of grantees for awards is to be made after careful evaluation of proposals by an evaluation panel within DOL. Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The panel results are advisory in nature and not binding on the Grant Officer. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. Panelists will evaluate the proposals on the basis of the following factors:

A. Design and Approach of Project (40 points)

Applicant's planned approach for accomplishing the objectives set forth in the Statement of Work. This includes a basic understanding of the initiatives as reflected in the planning, development and implementation of the program(s): The soundness of the plan to accomplish the goals and the objectives and the establishment of measurable outcomes.

B. Content, Scope and Quality of Proposed Project (40 points)

Consideration will be given to such factors as: organizational structure, program components and activities, staffing and resources and the ability of offer to accomplish the goals and objectives of the Initiatives.

C. Demonstrated Capacity to Establish Linkages and Leverage Resources (20 points)

The ability of the offerer to complete the objectives set forth in the Statement of Work, to provide necessary linkages with complementary programs, the business community, schools, State and local training agencies and other

organizations providing employment and training services. Also evaluated will be the soundness of plans for linking community resources and their active participation in program objectives.

D. Costs

Costs shall be rated separately. Costs will be analyzed to determine reasonableness. Available resources should be adequate for the services proposed in the application.

Please indicate costs separately for each major activity area (School-to-Work, skill standards or Reemployment program). The cost in each areas must be reasonable in view of the anticipated results. Applicants should document their expected costs and justify why they consider these costs reasonable.

Applicants must indicate for each major area the principle personnel to be assigned. If the work or most of the work would be performed by a subgrantee, include information on the proposed subgrantee organization and its principle personnel to be assigned to the planned work.

Applicants are advised that awards may be made to more than one organization for a given cluster, i.e. Skill Standards, and that awards may be made in all or selected clusters. Awards may not be made in a cluster area in which proposals are rated technically unacceptable.

Signed at Washington, DC this 5th day of May.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

Appendices

A. SF–424, Application for Federal Assistance

B. SF–424A, Budget

BILLING CODE 4510–30–M

APPENDIX A

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

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: 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.)

APPENDIX B

BUDGET INFORMATION – Non Construction Programs

Catalog of Federal Domestic Assistance	Estimated Unobligated Funds		New or Revised Budget	
CFDA NUMBER	FEDERAL	NON-FEDERAL	FEDERAL	NON-FEDERAL
1._____	$_____	$_____	$_____	$_____
2._____	$_____	$_____	$_____	$_____

COST CATEGORY	FEDERAL FUNDING			NON-FEDERAL CONTRIBUTION		
DIRECT COST	CURRENT FEDERAL BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED FEDERAL BUDGET	CURRENT AWARDEE BUDGET	REVISIONS AND/OR EXTENSIONS	REVISED AWARDEE BUDGET
(A) PERSONNEL						
(B) FRINGE BENEFITS						
(C) TRAVEL & PER DIEM						
(D) EQUIPMENT						
(E) SUPPLIES						
(F) CONTRACTUAL						
(G) OTHER						
TOTAL DIRECT COST						
INDIRECT COST						
TOTAL ESTIMATED COST						

AUTHORIZED FOR LOCAL REPRODUCTION SF424-A

[FR Doc. 94–11456 Filed 5–10–94; 8:45 am]
BILLING CODE 4510-30-C

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of April 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the first or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,480; Metacomet Manufacturing Co., Inc., Fall River, MA

TA-W-29,579; GEM Industries North East, Gardner, MA

TA-W-29,460; Elgin Electronics, Erie, PA

TA-W-29,418; RHOR, Inc., Chula Vista, CA

TA-W-29,487; Middleton Aerospace Corp., Middleton, MA

TA-W-29,439; American Central Gas Companies, Inc., West Texas Div., Odessa, TX

TA-W-29,482; BASF Corp., Lowland, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-29,475, TA-W-29,476; Mewbourne Oil Co., Oklahoma City, OK and Midland, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,360; Flint Ink Corp., Lodi, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,684; Consolidated Services, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,458; The Pillsbury Co., East Greenville, PA

U.S. imports of prepared flour mixes and doughs are negligible relative to total U.S. shipments in the relevant time period.

TA-W-29,528; The Breyers Co., Charlotte, NC

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-29,465; Northrop Corp., 100 Morse St., (Bld #3), Norwood, MA

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-29,549; Atlantic Design Co., Vestal, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,512; Johnson & Sons, Inc., (Formerly The Drackett Co., Inc., Urbana, OH)

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,462; Intermet Foundries, Lower Basin Foundry, Lynchburg, VA

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-29,506; B.C. Manufacturing, Plains, PA

A certification was issued covering all workers separated on or after February 2, 1993.

TA-W-29,612; P.B. Apparel, Inc., Poplar Bluff, MO

A certification was issued covering all workers separated on or after February 21, 1993.

TA-W-29,585; Hylton Drilling Co., Bakersfield, CA

A certification was issued covering all workers separated on or after February 23, 1993.

TA-W-29,591; Movie Star No. 2, Poplarville, MS

A certification was issued covering all workers separated on or after March 3, 1993.

TA-W-29,502, TA-W-29,503; Tococo, Inc., Wilmore, KY and Midway, KY

A certification was issued covering all workers separated on or after January 31, 1993.

TA-W-29,456; Stoltze-Conner Lumber Co., Darby, MT

A certification was issued covering all workers separated on or after January 10, 1993.

TA-W-29,545; Andrea Manufacturing, Decatur, IL

A certification was issued covering all workers separated on or after February 17, 1993.

TA-W-29,507; Maura Manufacturing, Wilkes Barre, PA

A certification was issued covering all workers separated on or after February 2, 1993.

TA-W-29,604 Durango Apparel, Inc., El Paso, TX

A certification was issued covering all workers separated on or after February 24, 1993.

TA-W-29,523; Scanti Lingerie Co., Inc., Battleboro, NC

A certification was issued covering all workers separated on or after February 4, 1993.

TA-W-29,647; Bonis Sportswear, Inc., Tampa, FL

A certification was issued covering all workers separated on or after March 18, 1003.

TA-W-29,484; Landmark Oil Exploration, Wichita, KS

A certification was issued covering all workers separated on or after February 2, 1993

TA-W-29,707; GTI Corp., Diode Seal Dept., Hadley, PA

A certification was issued covering all workers separated on or after March 9, 1993.

TA-W-29,491; Shieldalloy Metallurgical Corp., Cambridge, OH

A certification was issued covering all workers separated on or after January 2, 1993.

TA-W-29,616, TA-Q-29,617; Denise Barry Fashions, Inc., Nazareth, PA and Sportette Industries, Inc., Bath, PA

A certification was issued covering all workers separated on or after March 1, 1998

TA-W-29,618, TA-W-29,619; Sportette Industries, Inc., Nazareth, PA and Ironhead, Inc., Coplay, PA

A certification was issued covering all workers separated on or after March 1, 1993.

Arco Oil & Gas Co

TA-W-29,431; Atlantic Richfield Co., Dallas, TX

TA-W-29,432; Arco Permian, Midland, TX

TA-W-29,433; Atlantic Richfield, Bakersfield, CA

TA-W-29,434; Arco Exploration & Production Technology, Plano, TX

A certification was issued covering all worker separated on or after February 21, 1994.

Also, pursuant to Title V of the North American Free Trade Aggrement Implementation Act (Pub. Law. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with section 250(a) subchapter D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of February, 1994

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, or such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(c) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00060; B and B Garment Works, Inc., Parsons, TN

The investigation revealed that criteria (3) and criteria (4) were not met. There was no shift in production from the workers' firm to Mexico or Canada during the relevant period. The investigation further revealed that the contractors from who B and B Garment Works received production orders did not contract work with firms in Mexico or Canada. The contractors are experiencing increased production orders.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00053; Simpkins Industries, Westfield River Paper Co., Inc., Russell, MA

A certification was issued covering all workers of Simpkins Industries, Westfield River Paper Co., Inc., Russell, MA separated on or after December 8, 1993.

NAFTA-TAA-00068; Innotech, Inc., Roanoke, VA

A certification was issued covering all workers related to the finishing of semi-finished plastic lenses at Innotech, Inc., Roanoke, VA separated on or after December 8, 1993.

NAFTA-TAA-00059; Boss Manufacturing Co., El Paso, TX

A certification was issued covering all workers of Boss Manufacturing Co., El Paso, TX separated on or after December 8, 1993.

NAFTA-TAA-00061; Wotco, Inc., Casper, WY

A certification was issued covering all workers engaged in employment related to the production of 240 ton truck bodies at Wotco, Inc., Casper, WY separated on or after December 8, 1993.

NAFTA-TAA-00058; Frigidaire Co., Athens Range Productions, Athens, TN

A certification was issued covering all workers related to fabricated parts production at Frigidaire Co., Athens Range Products, Athens, TN separated on or after December 8, 1993.

I further determine that all workers engaged in employment related to assembly operations at Frigidaire Co., Athens Range Products, Athens, TN are denied eligibility to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

NAFTA-TAA-00062; Reliance COMM/TEC, Reliable Electric Div., St. Stephen, SC

A certification was issued covering all workers engaged in employment related to the production of the RLS-50 self strip terminal block, the BT 25 binding post terminal block, & the CQF 50 binding post terminal block at the St. Stephen, SC plant of the Reliable Electric Div of Reliance COMM/TEC separated on or after December 8, 1993.

I further determine that all workers engaged in employment related to the production of articles other than the RLS-50 self-strip terminal block, the BT 25 binding post terminal block, and the CQF 50 binding post terminal block at the St. Stephen, SC plant are denied eligibility to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

I hereby certify that the aforementioned determinations were issued during the month of April, 1994. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: May 3, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-11452 Filed 5-10-94; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931,

as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Rate Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. GA940063 and MI940033, dated Feb. 11, 1994. Arenac, Gladwin and Ogemaw Counties, previously in MI940033, are now added to MI940003 for building construction.

Agencies with construction projects pending, to which Wage Determination GA940063 would have been applicable, should utilize the project determination procedure by submitting an SF–308. (See Regulations, 29 CFR part 1, section 1.5.) Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is within ten (10) days of this notice, the contract specifications need not be affected.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume IV

Missouri
MO940070 (May 13, 1994)
MO940071 (May 13, 1994)
MO940072 (May 13, 1994)
MO940073 (May 13, 1994)
MO940074 (May 13, 1994)
MO940075 (May 13, 1994)
MO940076 (May 13, 1994)

Texas
TX940112 (May 13, 1994)
TX940113 (May 13, 1994)
TX940114 (May 13, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ940004 (Feb. 11, 1994)

New York
NY940003 (Feb. 11, 1994)
NY940004 (Feb. 11, 1994)
NY940013 (Feb. 11, 1994)
NY940018 (Feb. 11, 1994)
NY940022 (Feb. 11, 1994)

Volume II

District of Columbia
DC940001 (Feb. 11, 1994)

Maryland
MD940016 (Feb. 11, 1994)
MD940017 (Feb. 11, 1994)
MD940034 (Feb. 11, 1994)
MD940048 (Feb. 11, 1994)

Virginia
VA940025 (Feb. 11, 1994)
VA940048 (Feb. 11, 1994)
VA940052 (Feb. 11, 1994)
VA940104 (Feb. 11, 1994)
VA940105 (Feb. 11, 1994)
VA940108 (Apr. 15, 1994)

Volume III

Alabama
AL940034 (Mar. 25, 1994)
AL940036 (Mar. 25, 1994)

Georgia
GA940031 (Feb. 11, 1994)
GA940053 (Feb. 11, 1994)
GA940065 (Feb. 11, 1994)

Volume IV

Illinois
IL940001 (Feb. 11, 1994)
IL940007 (Feb. 11, 1994)
IL940015 (Feb. 11, 1994)
IL940060 (Feb. 11, 1994)

Indiana
IN940004 (Feb. 11, 1994)

Michigan
MI940001 (Feb. 11, 1994)
MI940002 (Feb. 11, 1994)
MI940003 (Feb. 11, 1994)
MI940004 (Feb. 11, 1994)
MI940005 (Feb. 11, 1994)
MI940007 (Feb. 11, 1994)
MI940012 (Feb. 11, 1994)
MI940017 (Feb. 11, 1994)
MI940031 (Feb. 11, 1994)
MI940046 (Feb. 11, 1994)
MI940047 (Feb. 11, 1994)

Volume V

Arkansas
AR940001 (Feb. 11, 1994)
AR940008 (Feb. 11, 1994)

Iowa
IA940006 (Feb. 11, 1994)
IA940018 (Feb. 11, 1994)

Kansas
KS940008 (Feb. 11, 1994)
KS940012 (Feb. 11, 1994)

Missouri
MO940053 (Apr. 22, 1994)
MO940054 (Apr. 22, 1994)

Oklahoma
OK940022 (Feb. 22, 1994)

Texas
TX940023 (Feb. 11, 1994)
TX940073 (Feb. 11, 1994)
TX940097 (Feb. 11, 1994)

Volume VI

Alaska
AK940001 (Apr. 11, 1994)

Colorado
CO940001 (Feb. 11, 1994)
CO940002 (Feb. 11, 1994)
CO940003 (Feb. 11, 1994)
CO940004 (Feb. 11, 1994)

CO940005 (Feb. 11, 1994)
CO940006 (Feb. 11, 1994)
CO940007 (Feb. 11, 1994)
CO940009 (Feb. 11, 1994)
CO940010 (Feb. 11, 1994)
CO940025 (Feb. 11, 1994)
Oregon
OR940001 (Feb. 11, 1994)
Washington
WA940001 (Feb. 11, 1994)
WA940003 (Feb. 11, 1994)
WA940005 (Feb. 11, 1994)
WA940007 (Feb. 11, 1994)
WA940008 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 6th day of May 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–11450 Filed 5–10–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA-TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA-TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than May 23, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than May 23, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 2nd day of May, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at governor's office	Petition No.	Articles produced
Pope & Talbot; Wood Products (Co.)	Port Gamble, WA	04/14/94	NAFTA–00086	Dimension lumber for domestic markets.
Howes Leather Company, Inc.; Ashland Hide Company (Wkrs.).	Asland, KY	04/26/94	NAFTA–00087	Sole leather used in manufacturing of footwear.
Andrea Mfg.; Joyce Mfg. (ILGWU)	Decatur, IL	04/18/94	NAFTA–00088	Womens sportswear—jacket, skirt, pants, vest, short, blouse.
Lyons Falls Pulp & Paper (UPIU)	Lyons Falls, NY	04/19/94	NAFTA–00089	Chlorine free paper.
Kraft General Foods; Desserts (frozen), Snacks (Wkrs.).	Avon, NY	04/26/94	NAFTA–00090	Frozen novelties (pudding pops, jello pops, etc.).
L. Grief Co. (Wkrs.)	Shippensburg, PA	04/26/94	NAFTA–00091	Mens suit pants, slacks, and vests
Inda Limited; Season All Industries (Wkrs.).	Indiana, PA	04/26/94	NAFTA–00092	Windows (glass) for commercial, public buildings (schools, office buildings, etc.).
Mallinckrodt Anesthesiology; Mallinckrodt Medical, Inc. (Co.).	New Athens, IL	04/22/94	NAFTA–00093	Temperature sensor products (disposable temperature probe, a medical device used primarily on patients while in surgery).

[FR Doc. 94–11455 Filed 5–10–94; 8:45 am]
BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–1B]

Copyright Arbitration Royalty Panels; List of Arbitrator Names

AGENCY: Copyright Office, Library of Congress.

ACTION: Determination of CARP arbitrator list.

SUMMARY: The Copyright Office of the Library of Congress is publishing the list of arbitrators eligible for selection to a Copyright Arbitration Royalty Panel (CARP) during 1994. This CARP arbitrator list will be used to select all arbitrators required for any royalty fee distribution proceeding initiated under 17 U.S.C. 802 and beginning during calendar year 1994.

EFFECTIVE DATE: May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Marilyn Kretsinger, Acting General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20540, (202) 707–8380.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal Reform Act of 1993, Public Law No. 103–198, 107 Stat. 2304 (1993), creates a system of Copyright Arbitration Royalty Panels (CARPs), administered by the Librarian of Congress and the Copyright Office, for the distribution of copyright royalty fees collected by the Copyright Office under the various compulsory licenses of the Copyright Code, 17 U.S.C., and for adjustment of compulsory license royalty rates. For royalty rate adjustments and distributions that are in controversy, section 802(b) of the Copyright Code requires the selection of a CARP consisting of three arbitrators from "lists provided by professional arbitration associations." The Librarian selects two arbitrators, who in turn select the third to serve as their chairperson. If the two arbitrators cannot agree, the Librarian is instructed to select the third arbitrator.

List of Nominated Arbitrators

To implement the CARP selection process of section 802(b), the Copyright Office recently issued a set of interim regulations. 59 FR 23964 (1994). Subpart A of part 251 of these regulations describes the selection and organization of the CARPs. 37 CFR part 251. For 1994, arbitration associations were asked to submit a list of persons qualified to serve on a CARP, as described in § 251.5, by May 6. The regulation required that the submitting arbitration association supply the following information for each person:

(1) The full name, address, and telephone number of the person.

(2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of facts and information which qualify the person to serve as an arbitrator under § 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant.

37 CFR 251.3(a).

Section 251.3(b) directs:

> After May 6, 1994 * * * the Librarian of Congress shall publish in the **Federal Register** a list of at least 30, but not more than 75 persons, submitted to the Librarian from at least three professional arbitration associations or organizations. The persons so listed must satisfy the qualifications and requirements of this subchapter and can reasonably be expected to be available to serve as arbitrators on a Copyright Arbitration Royalty Panel during that calendar year. This list will constitute the "arbitrator list" referred to in this subchapter.

The publication of today's list satisfies the requirements of § 251.3. Although § 251.3(b) sets an upper limit of 75 names, the Copyright Office is publishing an arbitrator list containing 107 names. The short period of time between receipt of the names from the arbitrator associations and the need to publish the arbitrator list precluded the possibility of prescreening the list to stay within the 75 person maximum. The Office is therefore waiving the maximum limitation for this year and is publishing all the names submitted by the arbitration associations that met the eligibility criteria of § 251.5. Arbitration associations submitted names of people that they found to satisfy the CARP eligibility requirements described in § 251.5 including ability to serve on a CARP at any time during 1994.[1]

As noted above in the quotation from § 251.3(b), today's list constitutes the CARP "arbitrator list" for purposes of subchapter B. The information submitted by an arbitration association with respect to each person listed is available for copying and inspection at the Licensing Division of the Copyright Office. See § 251.3(b) of the new regulations. Thus, for example, if the Librarian is required to convene a CARP this year for a royalty fee distribution, parties to that proceeding may contact the Licensing Division of the Copyright Office, LM–458, to review that information as a means of formulating objections to listed arbitrators under § 251.4.

Deadline for Filing Financial Disclosure Statement

Publication of today's list also triggers a requirement imposed by the new regulation on the individuals named in the list. Section 251.32(a) of the CARP rules provides that, within one month of date of publication in **Federal Register**, each listed person must "file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress." The Copyright Office is sending a financial disclosure statement, with specific instructions for completing and filing the statement, to every arbitrator on the CARP arbitrator list. The disclosure statement will be used by the Librarian for purposes of determining what conflicts of interest, if any, may preclude the person from serving as an arbitrator in a CARP proceeding. Unlike the information submitted by arbitration associations under § 251.3(a), the information contained in the financial disclosure statements is confidential and is not available to the public or to the parties to the proceeding.

The arbitrators identified on the arbitrator list published today have until June 13, 1994, to file their financial disclosure statement with the Librarian. Failure to file the statement on time may preclude consideration of the person to serve on a CARP.

The CARP arbitrator list for 1994 includes:

Name and Affiliation

Mark Aarons, Esq.—*American Arbitration Association*

Eugene N. Aleinikoff, Esq.—*American Arbitration Association*

Allen H. Arrow, Esq.—*American Arbitration Association*

[1] This also includes any "spill over" into 1995 that may occur as a result of a CARP proceeding beginning late this year.

John S. Barr, Esq.—*American Arbitration Association*
Professor Hadley Batchelder—*"Judge-Net"*
Gerald E. Battist, Esq.—*American Intellectual Property Law Association*
William W. Becker, Esq.—*American Arbitration Association*
Rosalyn B. Bell, Esq.—*American Arbitration Association*
Richard Bennett, Esq.—*American Arbitration Association*
Richard M. Berman, Esq.—*American Arbitration Association*
Terrell C. Birch, Esq.—*American Arbitration Association*
Bruce Brickman, Esq.—*American Arbitration Association*
Stuart N. Brotman, Esq.—*American Arbitration Association*
The Honorable J. Robert Brown—*Judicate, Inc.*
E. Fulton Brylawski, Esq.—*American Film Martketing Association*
The Honorable Charles Clark—*Center for Public Resources, Inc.*
Herbert B. Cohn, Esq.—*American Arbitration Association*
Edward T. Colbert, Esq.—*American Arbitration Association*
Joel Davidow, Esq.—*American Arbitration Association*
James F. Davis, Esq.—*Center for Public Resources, Inc.*
Robert E. Donnelly, Esq.—*American Arbitration Association*
The Honorable Michael Dontzin—*Endispute, Inc.*
Edward Dreyfus, Esq.—*American Arbitration Association*
Corydon B. Dunham, Esq.—*American Arbitration Association*
Katheryn M. Dutenhaver, Esq.—*Endispute, Inc.*
Stuart D. Dwork, Esq.—*American Arbitration Association*
The Honorable Lenore G. Ehrig—*Judicate, Inc. and American Arbitration Association*
The Honorable Jesse Etelson—*Judicate, Inc.*
John B. Farmakides, Esq.—*American Arbitration Association*
Paul W. Fish, Esq.—*American Intellectual Property Law Association*
The Honorable Marvin E. Frankel—*Endispute, Inc.*
The Honorable Donald W. Frenzen—*American Arbitration Association*
The Honorable George R. Gallagher—*Judicate, Inc.*
David A. Gauntlett, Esq.—*"Judge-Net"*
Charles L. Gholz, Esq.—*American Intellectual Property Law Association*
Eric D. Green, Esq.—*Endispute, Inc.*
Joseph A. Greenwald, Esq.—*American Arbitration Association*
The Honorable Philip A. Gruccio—*Endispute, Inc.*
The Honorable Jeffery S. Gulin—*Judicate, Inc.*
Michael R. Hafitz, Esq.—*American Arbitration Association*
William E. Hartgering, Esq.—*Endispute, Inc.*
Joseph S. Hellman, Esq.—*Endispute, Inc.*
David C. Hilliard, Esq.—*Center for Public Resources, Inc.*
Lawrence K. Harris, Esq.—*American Arbitration Association*
James R. Hobson, Esq.—*American Arbitration Association*
David H. Horowitz, Esq.—*American Arbitration Association*
George A. Hovanec, Esq.—*American Intellectual Property Law Association*
Scott Hunter, Esq.—*"Judge-Net"*
The Honorable Laurance M. Hyde, Jr., (Retired)—*"Judge-Net"*
The Honorable Bernard H. Jackson—*Endispute, Inc.*
The Honorable Mel R. Jiganti—*Endispute, Inc.*
James H. Johnston, Esq.—*American Arbitration Association*
John J. Jordan, Esq.—*American Arbitration Association*
Judy A. Julian, Esq.—*Endispute, Inc.*
The Honorable Catherine B. Kelly—*Judicate, Inc.*
Robin Rae, Kravitz, Esq.—*American Arbitration Association*
Robert M. Landis, Esq.—*Center for Public Resources, Inc.*
The Honorable William B. Lawless, (Retired)—*"Judge-Net"*
Allen Lenchek, Esq.—*Judicate, Inc.*
Arthur J. Levine, Esq.—*Center for Public Resources, Inc.*
Michael K. Lewis, Esq.—*Center for Public Resources, Inc.*
Burton L. Litwin, Esq.—*American Arbitration Association*
Lee Loevinger, Esq.—*American Arbitration Association*
The Honorable Reuben Lozner—*Judicate, Inc.*
The Honorable James P. Lynch, Jr.—*Endispute, Inc.*
Thomas J. Macpeak, Esq.—*American Intellectual Property Law Association*
Jonathan A. Marks, Esq.—*Endispute, Inc.*
The Honorable Frank J. McGarr—*Center for Public Resources, Inc. and Endispute, Inc.*
The Honorable H. Curtis Meanor—*Center for Public Resources, Inc.*
Bernard A. Meany, Esq.—*American Intellectual Property Law Association and American Arbitration Association*
Barry William Messinger, Esq.—*American Arbitration Association*
The Honorable Andrew Gill Meyer—*Endispute, Inc.*
Frederick G. Michaud, Esq.—*American Intellectual Property Law Association*
Kenneth E. Milan, Esq.—*Center for Public Resources, Inc.*
Charles B. Molineaux, Esq.—*American Arbitration Association*
Albert I. Moon, Jr., Esq.—*"Judge-Net"*
The Honorable Sharon T. Nelson—*Judicate, Inc. and American Arbitration Association*
Larry S. Nixon, Esq.—*American Intellectual Property Law Association*
Harry R. Olsson, Jr., Esq.—*American Arbitration Association*
The Honorable Paul N. Pfeiffer—*Judicate, Inc.*
Robert R. Priddy, Esq.—*American Intellectual Property Law Association*
G. Franklin Rothwell, Esq.—*American Intellectual Property Law Association*
E. Leonard Rubin, Esq.—*Center for Public Resources, Inc.*
Joseph B. Russell, Esq.—*American Arbitration Association*
The Honorable James V. Ryan—*Endispute, Inc.*
Perry J. Saidman, Esq.—*American Intellectual Property Law Association*
Jeffrey M. Samuels, Esq.—*American Intellectual Property Law Association*
The Honorable Alex H. Sands, Jr.—*Judicate, Inc.*
The Honorable Herbert Silberman—*Judicate, Inc.*
Linda R. Singer, Esq.—*Center for Public Resources, Inc.*
Michael R. Slobasky, Esq.—*American Intellectual Property Law Association*
The Honorable Harvey Smith—*Endispute, Inc.*
The Honorable Louis Spector—*Judicate, Inc.*
Jeffrey L. Squires, Esq.—*American Arbitration Association*
The Honorable Alfred T. Sulmonetti, (Retired)—*"Judge-Net"*
Patricia A. Szervo, Esq.—*American Arbitration Association*
The Honorable Robert E. Tarleton—*Endispute, Inc.*
The Honorable J. Owen Todd—*Endispute, Inc.*
John M. Townsend, Esq.—*American Arbitration Association*
Paul C. Van Slyke, Esq.—*Center for Public Resources, Inc.*
James C. Wray, Esq.—*American Intellectual Property Law Association*
The Honorable Ronald P. Wertheim—*Judicate, Inc.*
Mary L. Wilson, Esq.—*American Arbitration Association*
James C. Wray, Esq.—*American Intellectual Property Law Association*
Michael D. Young, Esq.—*Endispute, Inc.*
Bruce Zagaris, Esq.—*American Arbitration Association*

Dated: May 6, 1996.

Barbara Ringer,

Acting Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–11542 Filed 5–10–94; 8:45 am]

BILLING CODE 1410–09–P

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting of National Commission on Manufactured Housing

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of meeting.

SUMMARY: In announces with the Federal Advisory Committee Act, Public Law 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

DATES: May 24, 1994, 8:30 a.m. 5 p.m., Full Commission Meeting; May 25, 1994, 8:30 a.m. 5 p.m., Full Commission Meeting; May 26, 1994, 8:30 3 p.m., Full Commission Meeting.

ADDRESSES: Holiday Inn Old Town, 480 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Manufactured Housing, 301 N. Fairfax Street, suite 110, Alexandria, VA 22314 (703) 603–0440.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 94–11384 Filed 5–10–94; 8:45 am]

BILLING CODE 6820–EA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by June 6, 1994, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by June 1, 1994.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:.

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 95 & 96 Arts Education Partnership Grants Application Guidelines.

Frequency of collection: Annually.

Respondents: State arts agencies.

Use: Guideline instructions and applications elicit relevant information from state arts agencies that apply in the Arts in Education Program. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

Estimated number of respondents: 28.

Average burden hours per response: 28.

Total estimated burden: 784.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 94–11993 Filed 5–10–94; 8:45 am]

BILLING CODE 7537–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by June 6, 1994, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by June 1, 1994.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, Nation Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to U.S.C. 3504(h).

Title: U.S./Canada/Mexico Creative Artists' Residencies: Host Organizations Application Guidelines FY 1995.

Frequency of Collection: Annually.

Respondents: Non profit arts organizations.

Use: Guideline instructions and applications elicit relevant information from non profit arts organizations apply in the International Program. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

Estimated number of respondents: 110.

Average burden hours per response: 24

Total estimated burden: 2,640.

Judith E. O'Brien

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 94–11394 Filed 5–10–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Capstone Project Section) to the National Council on the Arts will be held on May 26, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the pblic from 9 a.m. to 9:45 a.m., for Opening Remarks and a General Program Overview and from 4:30 p.m. to 5:30 p.m. for a Policy Discussion.

The remaining portion of this meeting from 9:45 a.m. to 4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundantion on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public purusant to

subsection (c)(4) (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodaions due to a disability, please contact the Office of Special Constituencies, National Endowment of the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obatined from Ms. Yvonne Sabine, Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439,

Dated: May 4, 1994.

Yvonne M. Sabine,

Director Office of Panel Operations National Endowment for the Arts.

[FR Doc. 94-11333 Filed 5–10–94; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Folk and Traditional Arts Advisory Panel (Folk Arts Organizations Section) to the National Council on the Arts will meet on June 7–10, 1994. The panel will meet from 8:30 a.m. to 6:30 p.m. on June 7–9, 1994 nd from 8:30 a.m. to 4 p.m. on June 10, 1994. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC. 20506, or call (202) 682–5439.

Dated: May 4, 1994.

Yvonne M. Sabine,

Director Panel Operations National Endowment for the Arts.

[FR Doc. 94–11334 Filed 5–10–94; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographer's Fellowships Section) to the National Council on the Arts will be held on June 6–10, 1994. The panel will meet from 9 a.m. to 8:30 p.m. on June 6–9 and from 9 a.m. to 6 p.m. on June 10 in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2 p.m. to 6 p.m. on June 10 for a Policy Discussion.

The remaining portions of this meeting from 9 a.m. to 8:30 p.m. on June 6–9 and from 9 a.m. to 2 p.m. on June 10, are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4) (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: May 4, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–11335 Filed 5–10–94; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographer's Fellowship Prescreening Section) to the National Council on the Arts will be held on June 1–3, 1994. The panel will meet from 3 p.m. to 8 p.m. on June 1 and from 9 a.m. to 8 p.m. on June 2–3. This meeting will be held in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applications. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington DC 20506, or call 202/682–5439.

Dated: May 4, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94–11336 Filed 5–10–94; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Master Teachers/Mentors Section) to the National Council on the Arts will be held on June 1, 1994. The panel will meet from 9 a.m. to 2 p.m. This meeting will be held in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and

Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsections (c)(4) (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5439.

Dated: May 4, 1994.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 94-11337 Filed 5-10-94; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 04003453]

Atlas Corp.; Receipt of Application From Atlas Corp. To Amend Condition 55 of Source Material License No. SUA-917

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received, by letter dated April 22, 1994, an application from Atlas Corporation (Atlas) to amend Condition 55 of Source Material license No. SUA-917.

The license amendment application proposes:

1. to modify License Condition 55 to change the completion dates for several site reclamation milestones. The new dates proposed by Atlas would be an extension of one year and would read as follows:

A. (1) Windblown tailings retrieval and placement on the pile—December 31, 1996.

(2) Placement of the interim cover—April 30, 1995.

(3) Placement of final radon barrier—December 31, 1997.

B. (1) Placement of erosion protection—December 31, 2000.

(2) Projected completion of groundwater corrective actions—December 31, 1999.

FOR FURTHER INFORMATION, CONTACT: Allan T. Mullins, High Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415-6693.

Atlas Corporation's application to amend Condition 55 of Source Material License SUA-917, which describes the proposed changes to the license condition and the reason for the request is being made available for public inspection at the Commission's Public Document room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

The licensee and any person whose interest may be affected by the issuance of this license amendment may file a request for hearing. A request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); be served on the licensee (Atlas Corporation, Republic Plaza, 370 Seventeenth Street, suite 3150, Denver, Colorado 80202); and must comply with the requirements set forth in the Commission's regulations, 10 CFR 2.105 and 2.714. The request for hearing must set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, including the reasons why the request should be granted, with particular reference to the following factors:

1. The nature of the petitioner's right, under the Atomic Energy Act, to be made a party to the proceeding;

2. The nature and extent of the petitioner's property, financial or other interest in the proceeding; and

3. The possible effect, on the petitioner's interest, of any order which may be entered in the proceeding.

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 3rd day of May 1994.

For the Nuclear Regulatory Commission.

Kenneth R. Hooks,

Acting Chief, High Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94-17436 Filed 5-10-94; 8:45 am]

BILLING CODE 7580-01-M

[Docket No. IA-94-003; ASLBP No. 94-691-04-EA]

In the Matter of Robert C. Dailey; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

This Board is being established pursuant to the request of Robert C. Dailey in response to an immediately effective order. On March 29, 1994, the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research issued IA 94-003 to Mr. Dailey, entitled "Robert C. Dailey; Order Prohibiting Involvement in Certain NRC-Licensed or Regulated Activities (Effective Immediately)." 59 FR 14688, March 29, 1994. The Order prohibits Mr. Dailey from participation in any respect in any NRC-licensed activities.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 4th day of May 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94-11435 Filed 5-10-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. EA-93-236; ASLBP No. 94-692-05-EA]

In the Matter of Nuclear Support Services, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

This Board is being established pursuant to the request of Nuclear Support Services, Inc. ("NSSI") in response to an immediately effective order. On March 28, 1994, the Deputy

Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research issued to NSSI EA 93–236, entitled "Order Requiring the Removal of An Individual from NRC-licensed or Regulated Activities and Order Directing Review of Personnel Security Files (Effective Immediately)." 59 FR 14429, March 28, 1994. The Order directs NSSI to take certain actions related to another order directed to an NSSI employee on March 29, 1994, entitled "Robert C. Dailey; Order Prohibiting Involvement in Certain NRC-Licensed or Regulated Activities (Effective Immediately)." 59 FR 14688, March 29, 1994.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 4th day of May 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–11434 Filed 5–10–94; 8:45 am]

BILLING CODE 7510–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33984; File No. SR–GSCC–94–1]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving Proposed Rule Change Relating to the Comparison and Netting of Members' Treasury Auction Purchases

May 2, 1994.

On January 26, 1994, Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On February 18, 1994, GSCC filed Amendment No. 1 to the proposed rule change.[2] The Commission published notice of the proposed rule change in the **Federal Register** on March 10, 1994.[3] The Commission received one comment letter in response to this notice.[4] As discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change modifies GSCC's rules to allow GSCC to accept and report data on proprietary purchases of Treasury notes, bills, and bonds made at auction by members of GSCC's netting system; to net the purchases with when-issued trades of such members in the member securities; and to deliver purchased securities through GSCC's clearing mechanism (the "auction takedown system"). GSCC has established links with the Federal Reserve Banks of New York, Chicago, and San Francisco in order to provide the auction takedown system, and will establish links with other Federal Reserve Banks as needed. GSCC intends to implement the auction takedown system in the Spring of 1994.

The proposed rule change also authorizes GSCC to establish a mechanism for accepting data on members' trades in eligible securities from sources such as exchanges and other clearing corporations on a "locked-in" basis. This means that GSCC members would be obligated to accept trades as reported by such sources and GSCC would treat such data, under its rules, as if they were the successful results of GSCC's comparison of trade data submissions from buying and selling members.

1. The Auction Takedown Service

a. Eligible Securities

Only auction purchases meeting two conditions are eligible for inclusion in GSCC's auction takedown system. First, the purchase must be of a security with an issue date one or more business days after the auction date. Second, only proprietary purchases are eligible. The auction bid submitted to the Federal Reserve Ban must not include a customer's or client's name on the tender form or on an attachment to the tender form.[5]

b. Necessary Authorizations

Prior to its first eligible auction purchase, a GSCC member must authorize GSCC to receive data on the member's auction purchase from the applicable Federal Reserve Bank.[6] If a GSCC netting member does not provide the authorization, GSCC would not allow the participant to remain a netting member. The GSCC member also must provide to the applicable Federal Reserve Bank an authorization to provide to the applicable Federal Reserve Bank an authorization to provide GSCC with the data on the member's auction purchase and an authorization to deliver the auction purchase to GSCC's agent bank.[7]

C. Receipt of Data by GSCC

In the afternoon or evening of the day of a U.S. Department of Treasury ("Treasury") auction, the Federal Reserve Banks will transmit to GSCC information, on a per-CUSIP basis, regarding which netting members received auction awards of eligible securities and the amount and value of those awards at each yield. The auction award data will be deemed to be a compared trade; the contra-party will not submit any data on the trade. GSCC will report the auction trade to the purchasing member as part of the daily comparison output, and the trade will be binding on the member at that time.[8]

d. Netting

After the auction award is reported to the GSCC member, the position will go directly into GSCC's netting system. GSCC will treat the award, for settlement purposes, in the same manner as a compared trade which will be netted with a member's compared secondary market trades in the same CUSIP to establish net settlement positions. GSCC will then report to the member the net position (deliver, receive, or take no action) and net payment obligation. Once netted, GSCC

[1] 15 U.S.C. 78s(b) (1988).

[2] Letter from Jeffrey F. Ingber, General Counsel, GSCC to Jack Drogin, Branch Chief, Division of Market Regulation, Commission (February 15, 1994).

[3] Securities Exchange Act Release No. 33703 (March 2, 1994), 59 FR 11345.

[4] Letter from Gerald Murphy, Fiscal Assistant Secretary, U.S. Department of the Treasury to Jonathan G. Katz, Secretary, Commission (April 5, 1994).

[5] Even if the client or customer is a GSCC netting member, the trade will still be ineligible.

[6] The applicable Federal Reserve Bank would be the bank to which the GSCC member intends to submit its bid.

[7] Currently, The Bank of New York has been designated as agent bank for Treasury notes; Chemical Bank has been designated as agent bank for all other products.

[8] Procedures will be established that will provide the Federal Reserve Banks with a unilateral capability to cancel incorrect data and to provide new, correct data, as necessary. A member can generate a cancellation and correction request to the Federal Reserve Banks if it believes an error had been made. The requested adjustment will be made only if it is acted upon by a Federal Reserve Bank.

will be obligated to accept from the applicable Federal Reserve Bank delivery of each member's auction purchase and pay for such purchase, through its agent banks. Pending delivery on issue date, GSCC will collect clearing fund margin and forward mark allocation payment[9] amounts based on the net settlement position taking into account auction purchases. In addition, GSCC will collect clearance difference amounts on an intra-day basis for any money differences that arise as a result of the pairing off of auction purchases with fail obligations.[10]

e. Delivery

Each Federal Reserve Bank will deliver the auction purchases to the clearing bank designated by GSCC for such purpose. Early in the day on issue date, GSCC will provide its agent banks with instructions for receipt and delivery so that the auction purchases can be received against payment from the Federal Reserve Banks and redelivered to GSCC members against payment automatically and virtually instantaneously.

GSCC will pay the Federal Reserve Banks for the auction awards at the award price. GSCC will redeliver the auction awards to GSCC members against payment of the settlement value,[11] equal to the greater of the system (market) value for the position or the average auction price for such auction purchase. This adjustment is necessary to permit GSCC to net auction awards with when-issued and forward settling trades in the same security.

The normal GSCC delivery process should provide members with timely delivery of their auction awards to the extent that members have net long positions consisting of auction securities. Because members could be flat or short with respect to other GSCC members and long with respect to non-GSCC dealers or their customers, GSCC will provide a mechanism for ensuring timely delivery of needed auction purchases to a member who, as a result of its secondary market trading, will have on issue date a net short or flat position, or a long position that is smaller than the amount of auction purchases that it requires.[12] Under this procedure, no later than the evening of the second business day prior to issue date,[13] each such member can request that GSCC deliver to it auction purchases made by such member on a CUSIP-by-CUSIP basis ("Priority Delivery Request"). GSCC will split such member's existing net settlement position into a long position equal to the level of the requested delivery, and an offsetting short position. For purposes of calculating a member's required clearing fund deposit, a priority delivery request will be treated as if it were a net long position if it is greater than the member's actual net long position.

GSCC will establish the following auction award delivery priorities: first to members to fulfill Priority Delivery Requests; next to members with net long positions to the extent comprised of auction purchases; and then to members with net long positions that remain unfilled, on an equal basis, in $50 million increments.[14]

f. Participant Failure

In the event that a member with an auction award fails, on or prior to issue date, GSCC could incur a loss above the amount of collateral it holds from that member in liquidating the member's positions. The Treasury will not be liable for assessment for any loss that occurs as a result of the auction purchase. Instead, pursuant to its arrangement with the Treasury, GSCC will have the right to refuse delivery from a Federal Reserve Bank on issue date of all or a portion of the auction purchases of a GSCC member if certain conditions exist.

A netting member who made the auction purchase in a CUSIP must remain in a long position in that CUSIP. GSCC must have reasonable cause to believe, based on the information it has received, that the member cannot or will not timely take delivery of and fully pay for auction purchase amounts due it from GSCC. GSCC must have determined from its analysis and prevailing market conditions that there is reasonable cause to believe that, if it were to liquidate the member's position, GSCC would incur a loss that would not be covered by the margin deposited by the member with GSCC and/or profits from the liquidation of other positions of the member. GSCC can specify the amount of auction purchases on which it will not take delivery, which amount may not exceed the member's net long position in that CUSIP.

GSCC must notify the appropriate Federal Reserve Bank, in a mutually acceptable manner, of its exercise of this right by no later than 8:30 a.m. New York time on the relevant issue date. The failing member will remain responsible for the payment of such securities pursuant to the terms established by the Treasury.

If GSCC incurs a residual loss as the result of the liquidation of a member's auction purchase, the loss will be allocated in the same manner as any other allocation of loss. The loss will be spread among all of the netting members that the failed member did business with on or prior to the day of default.

2. Locked-In Trades

The proposed rule change establishes a facility permitting GSCC to treat trade data received from designated sources other than a Federal Reserve Bank, such as exchanges or clearing corporations, as locked-in trades.[15]

a. Reporting of Locked-In Trade Data

GSCC will accept trade data from a locked-in trade source without matching it with data provided by a member. GSCC will report these locked-in trades

[9] In connection with this filing, GSCC is changing its formula for calculating the forward mark allocation ("FMA") payment obligation. Except for category 1 inter-dealer broker netting members, who do not have an FMA payment obligation, all netting members will have their FMA payment obligation calculated based on the entire debit mark.

[10] This money difference will arise if the average auction price is higher than the market value, with the result that the settlement value will be set at the average auction price. In such a case, if the net long position for the auction securities is paired off with a fail net short position in the same CUSIP (which would have a settlement value equal to the lower market value), there will be a money difference reflecting an amount owed to GSCC by the member.

[11] The settlement value, a new concept, is the system (market) value plus a delivery differential adjustment amount. In most instances, the delivery differential adjustment amount will be zero. GSCC will establish a higher delivery differential adjustment amount only under two circumstances. If the system (market) value is less than the average auction price, the delivery differential adjustment amount will be increased so that the settlement value equals the average auction price. In addition, GSCC may adjust the delivery differential adjustment amount if the member is subject to higher than normal surveillance status and if, in the opinion of senior GSCC management, the potential for such member to fail to meet its settlement obligations to GSCC is higher than normal. *See* Letter from Jeffrey F. Ingber, General Counsel, GSCC to Jack Drogin, Branch Chief, Commission (February 15, 1994). GSCC agrees that, to the extent practicable, it will consult with the Commission prior to adjusting the delivery differential adjustment amount for a member who is on surveillance status. GSCC will follow up any oral notification with a written notification and will continue to consult with the Commission during the time that GSCC exercises this authority. Memorandum to File from Christine Sibille, Attorney, Commission (April 25, 1994).

[12] GSCC will monitor the use of this mechanism to ensure that only members who need immediate delivery of auction securities are requesting the priority delivery.

[13] For auctions that are held on the business day immediately prior to issue date, the request must be made by no later than on the auction date.

[14] The maximum par amount of securities that can be delivered over FedWire is $50 million. GSCC delivers the securities at the maximum amount for operational ease, to provide a more efficient method to distribute securities.

[15] Proposals to extend this facility to organizations other than Federal Reserve Banks should be submitted for Commission review under section 19(b) of the Act prior to establishing links with other locked-in trade sources.

to members as part of its daily comparison output. For purposes of GSCC's rules, locked-in trades will be considered as compared trades and will be as valid, binding, and enforceable as comparisons issued based on a match of corresponding data submitted to GSCC by two members.

Each member that makes an eligible locked-in trade will be obligated to provide GSCC with authorization for GSCC to receive data on the locked-in trade from the locked-in trade source. A locked-in trade source can correct or delete a previously submitted trade by providing appropriate instructions to GSCC. If the locked-in trade source is not a party to the trade, GSCC may delete or correct the data upon receipt of matching instructions from each member that is a party to the trade.

b. Netting

Subject to the terms and conditions that GSCC agrees to with the locked-in trade source, GSCC may exclude any locked-in trade from its netting system. Each netting member that makes a locked-in trade that is eligible for netting and settlement by GSCC must provide GSCC and the locked-in trade source with authorization for GSCC to receive and the locked-in trade source to transmit data on the locked-in trade.

3. Other Revisions

Under GSCC's rules, a forward settling trade is eligible for GSCC's netting system only if the trade settles within less than a certain number of days after comparison by GSCC. For example, only trades that settle fifteen days or less after comparison currently are eligible for GSCC's netting system. The proposed rule change amends GSCC Rule 11, section 2 to permit GSCC to establish the maximum number of business days between comparison and settlement by a separately published schedule. GSCC will file with the Commission, pursuant to section 19(b)(3)(A) of the Act, any proposals to change this time period.[16] GSCC's rules also have been amended to allow GSCC to net fail deliver obligations and fail receive obligations with any other receive obligations and deliver obligations.

II. Comments

As noted above, in response to the notice published in the Federal Register, the Treasury provided the Commission with comments in support of the proposal. The Treasury believes that including Treasury auction purchases in a multilateral netting system could be beneficial to the efficiency of the government securities market. In addition, the Treasury believes that the proposal would enable GSCC to improve its risk management by providing a more complete picture of its members' positions.

III. Discussion

The Commission believes the proposed rule change is consistent with section 17A of the Act, and, therefore, is approving the proposal. Specifically, the Commission believes the proposal is consistent with section 17A(b)(3)(F)[17] of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in clearance and settlement of securities transactions, and removes impediments to the national system for the prompt and accurate clearance and settlement of securities transactions.

In the 1992 Joint Report on the Government Securities Market ("Joint Report"), the Commission, the Treasury, and the Board of Governors of the Federal Reserve System recommended several enhancements to GSCC's system.[18] One such enhancement was the inclusion of auction take-down activity in GSCC's netting system, since the benefits of netting would increase as more trades are included in the net. The Joint Report concluded that if the auction takedown proposal were implemented, "additional information on the overall distribution process required to settle Treasury auction purchases and on the true net settlement positions of members during a when-issued period would be available at GSCC. GSCC's proposal is especially significant in light of the risk to the Treasury resulting from the auction settlement process and the use of autocharge agreements. GSCC's proposal would reduce the risk to the Treasury to the extent that GSCC assumes responsibility for auction purchases that are netted against when-issued sales."[19]

The proposal provides a more efficient method of clearing and settling auction securities. GSCC members will be able to access information on the securities awarded to them through GSCC's reporting system, and will have the securities delivered and paid for through GSCC's clearance system. The processing required will be reduced since the Federal Reserve Banks will provide information and securities to, and receive payment from, one source, GSCC, for all GSCC members. By channeling the payment and delivery obligations through one source (and reducing those obligations through netting), the clearance process will be made more efficient.

Currently, the proposal only covers purchases of Treasury securities that settle one or more business days after the auction date. This limitation is needed because of the limitations in GSCC's system. However, the number of Treasury securities that settle on the same day as auction date is so small that this limitation should not have a significant effect on the national clearance system.[20]

In addition, the proposal only covers proprietary purchases. If a GSCC member were to fail, GSCC would still accept auction awards to the extent covered by the GSCC member's short position. If a GSCC member's customer purchases were included in the proposal, there is a possibility that a customer's purchase would be used to satisfy the failed member's short position rather than delivered to the customer. Once the auction takedown proposal has been implemented, there will be opportunities to study means of including customer trades without undue risk to the customer. Until such time, the Commission believes that it is reasonable to exclude customer trades.[21]

The proposal would change GSCC's settlement pricing to accommodate introduction of auction positions. These changes will serve two functions. First, it will ensure that GSCC never delivers auction purchases for less than the amount it paid for the securities. Second, it will provide GSCC with a risk control measure when a member is subject to higher than normal surveillance status. This should help GSCC address the risk of liquidity

[16] Memorandum to File from Christine Sibille, Attorney, Commission (April 25, 1994).

[17] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[18] U.S. Department of Treasury, Board of Governors of the Federal Reserve System, and Securities and Exchange Commission, Joint Report on the Government Securities Marketplace (January 1992). The recommendations are (1) automated comparison of repurchase agreements; (2) inclusion of auction take down activity and yield-based trades in GSCC's netting system; (3) increase in categories of GSCC membership; and (4) confirmation systems for non-dealer, institutionalized customers.

[19] Joint Report at 30. With this approval, all but two of the recommended enhancements to GSCC's system will have been implemented. Only the first recommendation, automated comparison of repurchase agreements, and the last recommendation, confirmation systems for institutionalized customers, have not been implemented.

[20] During all of 1993 and 1994, no Treasury securities have settled on the same day as the auction date. Memorandum to File from Christine Sibille, Attorney, Commission (April 25, 1994).

[21] Approximately 15% of the securities awarded to GSCC members are customer purchases. Memorandum to File from Christine Sibille, Attorney, Commission (April 25, 1994).

problems, and enhance GSCC's ability to safeguard funds and securities.

The proposal also provides a general mechanism for GSCC to accept locked-in trade data from sources other than a Federal Reserve Bank. By accepting the trades directly from a locked-in trade source (such as an exchange), the process of clearing and settling the locked-in trade is made more efficient. The GSCC member does not have to duplicate input of the data, submitting the data once to the locked-in trade source and once to GSCC. Instead, the information flows directly to GSCC, thereby lessening the risk of incorrect or incomplete submissions, or unconfirmed trades.

The proposal extends the benefits of GSCC's centralized, automated netting system to netting members' auction securities purchases. By including auction securities in GSCC's netting system, the level of potential netting is increased and the number of required movements of securities are reduced.[22] Netting of auction securities also may have the effect of increasing a member's liquidity. Previously, a GSCC member with a short position would have its required margin payments calculated based on its short position, even if it had an offsetting long position in auction purchases. Once the positions are netted, the member's margin payments will be calculated based on the position after taking into account the auction purchases, perhaps creating a lower margin payment. The additional liquidity may assist in the prompt and accurate clearance and settlement of securities transactions. In this manner, the proposal removes impediments to the national system for the prompt and accurate clearance and settlement of securities transactions, and fosters cooperation and coordination with persons engaged in clearance and settlement of securities transactions.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–GSCC–94–01) be, and hereby is, approved.

[22] In March 1994, GSCC's netting system received $289 billion in daily average buy/sell dollars. This amount was netted to result in $65 billion in average daily receive and deliver obligations. In effect, GSCC netted out approximately 77% of the dollar obligations of members.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11339 Filed 5–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34016; International Series Release No. 663; File No. SR–Amex–94–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Warrants Based on Foreign Government Bonds

May 5, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 2, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading under Section 106 of the Amex Company Guide warrants tied to changes in the prices of foreign government bonds.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to list and trade under Section 106 of the Amex Company Guide warrants that can be expected to fluctuate in value based on changes in prices of foreign government bonds.[1] Such issues may relate to a single bond issue or several bond issues of one or more foreign countries.[2]

Warrants based on prices of foreign government bonds will conform to the listing guidelines under Section 106 of the Amex Company Guide which currently provide that:

(1) The issuer shall have assets in excess of U.S. $100,000,000 and otherwise substantially exceed the size and earnings requirements of Section 101(A) of the Amex Company Guide;

(2) The term of the warrants shall be for a period ranging from one to five years from date of issuance; and

(3) The minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and an aggregate market value of U.S. $4,000,000.

Such warrants shall be direct obligations of their issuer subject to cash settlement in U.S. dollars, and exercisable throughout their life (*i.e.* American style) or exercisable only at expiration (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant will be entitled to a cash settlement value computed in accordance with a formula specified in the issuer's prospectus. If "out of the money" at the time of expiration, the warrants will expire worthless.

Warrants may be structured either to increase or decrease in value based on the increase or decrease in the price or yield of the government bond or bonds. Because all payments will be required to be in U.S. dollars, there would be no currency risk except to the extent that fluctuations in the value of the relevant

[1] The size required for an individual government bond issue relating to a warrant based thereon shall not be less than the equivalent of U.S. $100,000,000. In addition, such warrant issues shall be based on only those government bonds for which prices are readily available from independent vendors of financial information.

[2] For purposes of this rule change, the Exchange intends to limit such issues to warrants based on government bonds of the following countries: Australia, Austria, Canada, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Spain, Sweden, Switzerland, and the United Kingdom. The Exchange will consult with Commission staff prior to listing warrants based on bonds issued by governments other than those specified above.

currency affect the price or yield of the government bond(s).

The Amex will require that member firms only sell such warrants to investors whose accounts have been approved for options trading pursuant to Amex Rule 921. The Exchange also will distribute a circular to its membership prior to the commencement of trading calling attention to the risks associated with the purchase and trading of such warrants.

At this time, the Exchange anticipates the listing of a warrant issue based on the prices of between three and five foreign government issues. Holders of such warrants would be entitled to receive from the issuer in U.S. dollars a cash settlement value, if any, based on changes in the arithmetic average yield to maturity of the bonds as calculated by the designated Calculation Agent based on prices obtained from three dealers in the bonds.[3]

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principals of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose an inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission , 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–94–05 and should be submitted by June 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[FR Doc. 94–11340 Filed 5–10–94; 8:45 am]

BILLING CODE 8010–01–M

[3] The Exchange represents that it will consult with Commission staff prior to listing warrant issues tied to government bond(s) with respect to (1) the specific calculation methodology to be used by individual warrant issuers, and (2) the adequacy of available bond pricing information.

[4] 17 CFR 200.30–3(a)(12)(1993).

[Release No. 34–34017; File No. SR–PTC–92–16]

Self-Regulatory Organizations; Participants Trust Company; Order Approving on a Temporary Basis a Proposed Rule Change Relating to Margin Levels for Collateralized Mortgage Obligations

May 5, 1994.

On December 28, 1992, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–PTC–92–16) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] relating to the establishment of margin levels on Collateralized Mortgage Obligations ("CMO security" or "CMO") currently eligible for deposit or which may become eligible for deposit at PTC. Notice of the proposal appeared in the **Federal Register** on February 7, 1994.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change on a temporary basis, until April 30, 1995.

I. Description

PTC's proposal establishes a method of computing the percentages to be deducted from the market value of certain securities ("haircut") to determine how those securities should be valued for purposes of participants' Net Free Equity.[3] The securities in question are CMO securities[4] which are eligible for deposit or which may become eligible for deposit at PTC. Currently, the only such securities are Real Estate Mortgage Investment Conduits ("REMIC") issued by the U.S. Department of Veterans Affairs ("VA REMIC").[5]

Under PTC's rules, the Applicable Percentage[6] of the market value of

[1] U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 33546 (January 31, 1994), 59 FR 5646.

[3] Net Free Equity is calculated as the sum of: (1) The cash balance in the account; (2) the market value of securities in the account, less the appropriate haircut for such securities ("Applicable Percentage"); and (3) the value of all Supplemental Processing Collateral; minus (4) Reserve on Gain on transfers made that day. Supplemental Processing Collateral includes the following: (1) The value of optional deposits to the participants fund allocated to that account (optional deposits to the participants fund are deposits that exceed the minimum deposit required pursuant to PTC's rules and procedures); and (2) 20% of the mandatory deposits to the participants fund for the Master Account (mandatory deposits to the participants fund are minimum deposits required to be deposited into such fund pursuant to PTC's rules and procedures). Reserve on Gain means: (1) The contract value credited to the cash balance of a delivering participant or limited purpose participant over the market value of securities credited to the transfer account associated with the account of the receiving participant; or (2) the market value of securities credited to the transfer account associated with the account of a receiving participant over the contract value credited to the cash balance of the delivering participant or limited purpose participant. PTC Rules, Article I, Rule I.

[4] A CMO is a multiple-class mortgage cash flow security. As such, a CMO redirects the cash flow from an underlying standard mortgage-backed security ("MBS"), such as a Government National Mortgage Association ("GNMA") security, and allows the CMO issuer to create classes, or tranches, with many different interest rates, average lives, prepayment sensitivities, final maturities, and payment priorities.

[5] VA REMICs are securities for which the full and timely payment of principal and interest is guaranteed by the United States Department of Veterans Affairs and backed up the full faith and credit of the United States government. The Commission approved VA REMICs as eligible for deposit at PTC in Securities Exchange Act Release Nos. 30792 (June 10, 1992), 57 FR 27495, and 31914 (February 24, 1993) 58 FR 12295.

[6] "Applicable Percentage" means that percentage of the market value of securities that is included in the computation of Net Free Equity. The Applicable Percentage is determined by deducting certain

Continued

securities is used in computing a participant's Net Free Equity. PTC's rules require participants to maintain Net Free Equity of zero or greater in each of their agency, pledgee transfer, and proprietary accounts in order for transactions to be processed.[7] PTC has the right to borrow against or liquidate those assets that comprise the Net Free Equity computations in those accounts in the event that the participant responsible for one or more of those accounts fails to pay the account debit balance at the end of the day. By including only a portion of the market value of securities in Net Free Equity, *i.e.*, the Applicable Percentage, PTC attempts to limit the risk caused by fluctuations in the market value of securities in those accounts. In computing Net Free Equity, PTC deducts 5% from the market value of GNMA Single-Family securities, and higher levels for GNMA Project, Construction, and Mobile Home Securities to reflect their reduced liquidity.[8]

Unlike GNMAs, CMOs are structured as a series of tranches or classes, each of which represents a separate security with unique characteristics, such as differing payment schedules and price volatility. In addition, there is a lack of historical price data for CMOs, in contrast to GNMA securities. Consequently, PTC has chosen to rely on a model developed by the Asset Backed Securities Group/Trepp ("Trepp") that uses the yield on an underlying Treasury security to predict the potential movement and prepayment risk of a corresponding CMO tranche when subjected to a rise or fall in interest rates. Currently, PTC's model assumes a 50 basis point upward movement in the underlying Treasury securities for CMO tranches which exhibit positive effective duration (*i.e.*, rise in value with falling interest rates). For CMO tranches which exhibit negative effective duration (*i.e.*, decline in value with falling interest rate), the model assumes a 50 basis point downward move in the underlying Treasury security.[9]

Rather than assigning a uniform Applicable Percentage for all CMO securities, PTC takes into account the unique characteristics of each CMO tranche.[10] Each CMO tranche is subjected to a stress test to determine its response to yield changes, thereby allowing PTC to assign each tranche an appropriate margin. PTC's management will establish the margin based on the stated analysis as each CMO tranche is deposited at PTC. Nevertheless, PTC has represented that the minimum margin level for any CMO product will be 5%.[11]

II. Discussion

The Commission believes that PTC's proposed rule change is consistent with section 17A of the Act, and, specifically, with sections 17A(b)(3) (A) and (F).[12] Those sections require a clearing agency to be organized, and its rules be designed, to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission is approving PTC's proposal until April 30, 1995, to allow PTC to gain more experience with CMO securities.

In 1992, the Commission approved a PTC proposal to make certain VA REMIC securities, guaranteed by the U.S. government, eligible for deposit at PTC pursuant to PTC Article I, Rule 2.[13] The approval ran through December 31, 1992, to coincide with the expiration of the legislation authorizing the issuance of VA REMICs.[14] In 1993, legislation extending the VA's authority to issue REMICs through December 31, 1995 was enacted.[15] In light of the extension, the Commission approved a PTC proposal allowing it on a permanent basis to designate VA REMICs depository eligible, as long as they continue to be guaranteed by the U.S. government.[16]

PTC has relied on Trepp as its vendor for VA REMIC prices and has used Trepp's model to determine margin for such securities. Trepp was established in 1979 and created the first independent CMO pricing service in 1988. Currently, Trepp provides pricing and analytical services to more than 500 institutions, including 23 of the 25 largest bank trust departments.[17]

Because each CMO tranche has unique characteristics, Trepp models each security to determine its value. The information required to model each tranche of a CMO is derived from that CMO's prospectus, including the characteristics and principal payment priorities of each tranche, initial price and interest rate, and remaining principal balances and prepayment assumptions used to derive the cash flows and initial spread.[18]

Initially, PTC gauges the accuracy of these models by comparing the cash flows and other data calculated by the model to the information provided by the underwriter in the issuer summary report and the prospectus. In addition, the accuracy of the model is tested on an ongoing basis by comparing its valuations to those of the underwriter, and by using available factor information to verify the remaining principal balance of each security with those calculated by its corresponding model.[19]

PTC's model is an example of a static cash flow yield model, as distinguished from an option-adjusted spread ("OAS") model. Static cash flow and OAS models differ primarily in their handling of future interest rate and prepayment scenarios. A static cash flow yield analysis uses an interest rate/prepayment scenario which relies on current market conditions. This reliance creates two limitations. First, it might not measure accurately reinvestment

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percentages (*i.e.*, margin) from the market value of securities. See also definition of Net Free Equity, *supra* note 3.

[7] PTC Article II, Rule 13.

[8] Securities Exchange Act Release No. 33840 (March 31, 1994), 59 FR 16672.

[9] See letter from Leopold S. Rassnick, dated March 21, 1994, *supra* note 5. When first proposed, PTC's methodology calculated margins by assuming a change in prepayment speeds based on a sustained change in interest rates, applying the largest historic two-day movement in the yield of the underlying Treasury security as the applicable interest rate change. Thus, a 35 basis point upward move in the underlying Treasury securities for CMO tranches which exhibit positive effective duration; and a 50 basis point downward move in the underlying Treasury securities for CMO tranches which exhibit negative effective duration. See letter from Michael D. Frieband, dated August 17, 1993, *supra* note 5. PTC has since modified its methodology, which will now rely on a 50 basis point upward move in underlying Treasury securities for tranches exhibiting positive effective duration for purposes of calculating margin. Given the dearth of historical prices for CMOs, using a 50 basis point upward move in Treasury securities should generate more conservative margins. See letter from Leopold S. Rassnick, dated March 21, 1994, *supra* note 5.

[10] This represents a departure from PTC's past practice of assigning a specific percentage margin for each type of security that is eligible for deposit at PTC. For example, for GNMA Project Loan, Project Note, Construction Loan, and Mobile Home Securities, PTC established margin levels of 10%, 10%, 12%, and 20%, respectively. Securities Exchange Act Release No. 33840, *supra* note 8.

[11] See letter from Leopold S. Rassnick, dated March 17, 1994, *supra* note 5. Margins on CMO securities which cannot be modeled by an independent pricing source will be set at 100%. See letter from Leopold S. Rassnick, dated January 12, 1993, *supra* note 5.

[12] 15 U.S.C. 78q-1(b)(3) (A) and (F).

[13] See Securities Exchange Act Release No. 30792, *supra* note 5.

[14] 38 U.S.C. 3720h(1) and (2), as amended by P.L. 102-291, enacted on May 20, 1992.

[15] 38 U.S.C. 3720h(1) and (2), as amended by P.L 102-547, enacted on October 28, 1992.

[16] See Securities Exchange Act Release No. 31914, *supra* note 5. Should the VA's authority to issue securities with a U.S. government guarantee cease, any VA securities in PTC at that time shall remain depository eligible. *Id.*

[17] Letter from Michael D. Frieband, dated March 4, 1994, *supra* note 5.

[18] *Id.*

[19] *Id.*

risk caused by an investor's inability to reinvest periodic payments at a rate equal to the yield on the security. Second, such a model does not value the embedded option representing a mortgagee's ability to prepay, which can be a factor in determining the value of a particular CMO tranche.[20] It is the option to prepay which causes OAS models generally to be considered more accurate than static cash flow models. However, the enhanced accuracy of OAS models comes at a cost; such models are more complex and computer intensive than those relying on a static cash flow analysis. According to PTC, there are no daily price vendors that provide bulk prices for CMOs using an OAS model.[21]

Each CMO tranche is subjected to a stress test, the purpose of which is to observe the effect of an upward and downward movement of 50 basis points in the underlying Treasury yield of each CMO tranche.[22] Because the volatility of a CMO tranche is primarily a function of the level of interest rates, PTC has stated it will recalculate margins whenever the Treasury yield curve has changed by 100 basis points from the time of original issue or last margin recalculation. PTC has also stated that securities whose attributes warrant it shall have their margins reevaluated quarterly.[23]

In order to facilitate daily pricing and margin evaluations, PTC intends to acquire Trepp's CMO pricing model. Currently, PTC receives a price tape from Trepp daily no later than 5 p.m. and meets regularly with representatives from Trepp regarding its pricing service. Nevertheless, as the volume of CMOs deposited at PTC increases, the on-site availability of the Trepp model should provide PTC with additional safeguards.[24]

PTC's proposed methodology requires its model to predict accurately the market price of CMOs. Thus far, PTC's experience has been limited to comparing the predicted versus actual transation price of VA REMICs.[25] The data indicate that PTC's model has been reasonably accurate in predicting actual prices.[26] However, VA REMICs represent the most stable of CMOs given that VA mortgages are assumable, and therefore less subject to prepayment risk. Moreover, the structures of the VA REMICs so far issued and on deposit at PTC have not been particularly complicated.

Another concern raised by the proposed methodology relates to the prepayment projections on which it relies. The prepayment projections volunteered by twelve firms are averaged, but whether such quotes are executable is not considered. This may affect the accuracy of the prepayment speeds used to arrive at a market price for CMOs. Without accurate prepayment data, the predicted price might lag behind the market's true price by up to 30–45 days, when each agency issuing mortgage pass-through securities releases the actual prepayment factors [27] and settlement occurs. The interest rate volatilities of the underlying Treasuries from which the CMOs are priced can change 50–75 basis points over the course of 30–45 days. In part to address this concern, PTC has determined to use fifty basis points for purposes of running the stress test to establish margin.[28]

The Commission believes that in granting PTC temporary approval of its CMO pricing methodology until April 30, 1995, PTC will be afforded an opportunity to gain experience with its methodology. In addition, the temporary approval period will allow PTC to take steps to address any concerns which exist with respect to its methodology.[29]

The Commission believes that granting PTC temporary approval of its proposal for one year should allow it sufficient time to address the issues raised above. PTC's current CMO margining methodology should help ensure that CMO margins will be established that take into account the unique characteristics of each CMO tranche, and that PTC's reliance on a daily pricing source will provide it with timely price information. The resulting margins will afford PTC protection should it be necessary for PTC to borrow against or liquidate these assets.

III. Conclusion

For the reasons stated above, the Commission finds that PTC's proposal is consistent with section 17A of the Act.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[30] that PTC's proposed rule change (SR–PTC–92–16) be, and hereby is, approved on a temporary basis until April 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaet H. McFarland,

Deputy Secretary.

[FR Doc. 94–11341 Filed 5–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20280; 812–8640]

Merrill Lynch KECALP Growth Investments L.P. 1983, et al.; Application

May 5, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemptive Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Merrill Lynch KECALP Growth Investments L.P. 1983, Merrill Lynch KECALP L.P. 1984, Merrill Lynch KECALP L.P. 1986, Merrill Lynch KECALP L.P. 1987, Merrill Lynch KECALP L.P. 1989, Merrill Lynch KECALP L.P. 1991 (The "Partnerships"), KECALP Inc. (the "General Partner"), Merrill Lynch & Co., Inc. ("ML & Co.").

RELEVANT 1940 ACT SECTIONS: Exemption requested pursuant to section 6(b) of the Act and rule 17d–1 thereunder to permit certain transactions otherwise

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[20] *Id.*

[21] *Id.*

[22] *Id*; letter from Leopold S. Rassnick, dated March 21, 1994, *supra* note 5.

[23] Letter from Michael D. Frieband, dated March 4, 1994, *supra* note 5. PTC has yet to delineate the CMO attributes that would warrant quarterly reevaluation. See *infra* note 29.

[24] Letter from Michael D. Frieband, dated March 4, 1994, *supra* note 5.

[25] VA REMICs are the only CMOs currently depository eligible at PTC.

[26] See letter from Michael D. Frieband, dated August 17, 1993, *supra* note 5.

[27] A factor represents the fractional share of the original principal that remains in a given pool of mortgages comprising a mortgage pass-through security (*e.g.*, a factor of .7 indicates that 70% of a pool's principal remains).

[28] See letter from Leopold S. Rassnick, dated March 21, 1994, *supra* note 5.

[29] PTC has represented that it will provide the following information to the Commission prior to the expiration of the temporary approval period:

(1) PTC will explain what criteria it uses in identifying certain CMO tranches as more volatile and/or risky than other tranches. PTC will recalculate margin for any tranche whenever the Treasury yield curve has changed by 100 basis points from the time of original issue or last recalculation; however, until it establishes clear standards, PTC will reevaluate margins for all tranches at least twice a year, in addition to reevaluating selected tranches quarterly;

(2) PTC will consider using a model other than its present modelling vendor to conduct the stress test (or serve as the present vendor's back up), as opposed to relying on a single vendor both for the stress test and as a source of daily pricing;

(3) PTC will address the treatment of non-par issuances, which tend to be more sensitive to changes in interest rates than other CMOs;

(4) PTC will explain the method by which its present modelling source aligns a CMO with a referenced Treasury maturity; and

(5) PTC has stated its intention to modify its systems software to make automated price comparisons possible, and PTC will expedite the automation of its comparison of predicted versus actual CMO transation price data.

See letter from Leopold S. Rassnick, Vice President, General Counsel, and Secretary, PTC, to Francois Mazur, Staff Attorney, Division, Commission, dated May 3, 1994.

[30] 15 U.S.C. 78s(b)(2).

prohibited by section 17(d) of the Act and rule 17d–1. The requested order would amend a prior order.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Partnerships to make certain joint investments with ML & Co. or an affiliate of ML & Co. and to co-invest with certain limited partnerships in which ML & Co. is an investor.

FILING DATE: The application was filed on October 9, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 31, 1994, and should be accompanied by proof of service for applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, South Tower, World Financial Center, 225 Liberty Street, New York, New York 10080–6123.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Partnerships is a closed-end management investment company. Each Partnership also is an "employees' securities company," as defined in section 2(a)(13) of the Act, and is exempt from certain provisions of the Act pursuant to a prior order of the SEC (the "KECALP Order").[1] Partnership interests in the Partnerships were offered exclusively to certain employees of ML & Co. and its subsidiaries and to non-employee directors of ML & Co. Applicants request that any relief relating to the present application be extended to partnerships commencing operations in the future that operate under the terms of the KECALP Order. These partnerships are also referred to as the "Partnerships."

2. ML & Co. is a diversified financial services holding company. The General Partner, a registered investment adviser, is an indirect, wholly-owned subsidiary of ML & Co. and acts as the general partner of the Partnerships. All investments and dispositions of investments by each Partnership are approved by the board of directors of the General Partner.

3. Applicants request an amendment to the KECALP Order to permit the Partnerships to co-invest with "Affiliated Co-investors," defined as: Limited partnerships or other investment vehicles that (a) are not sponsored or managed by ML & Co. or one of its affiliates; (b) are an "affiliated person" of ML & Co. or one of its affiliates by virtue of the ownership by ML & Co. or its affiliate of 5% or more of the voting securities or partnership interests in such entity; and (c) are not controlled by ML & Co. or one of its affiliates (within the meaning of section 2(a)(9) of the Act).

4. The requested amendment also would permit ML & Co. or its affiliates to participate in co-investments with a Partnership and an Affiliated Co-investor may make additional investment opportunities available to its security holders, which would include ML & Co. or an affiliate.

5. The Kecalp Order approves certain transactions in accordance with rule 17d–1. Specifically, the Partnerships may invest in (a) any other partnerships or investment vehicles which are sponsored or managed by ML & Co. or its affiliates or (b) investments in which a partnership described in clause (a) is a participant or plans to become a participant and which would not be prohibited investments except that ML & Co. or any of its subsidiaries, or one or more officers, directors, or employees of the General Partner, have a partnership interest in or compensation arrangement with such partnership. Since the Affiliated Co-investors are not, by definition, sponsored or managed by ML & Co. or its affiliates, co-investments by the Partnerships with the Affiliated Co-investors are not permitted under the terms of the Kecalp Order.

6. Employees of ML & Co. and its subsidiaries must meet the suitability standards of a Partnership in order to be eligible to purchase units in a Partnership. In addition, the Partnerships' prospectuses have stated prominently that the units are speculative and are not a suitable investment for all qualified investors. Partnership interests in Partnerships formed after 1991 will not be offered to employees who earned, or whose annualized salary was, less than $75,000 with respect to the calendar year preceding the offering of such Partnership. In addition, no employee meeting the salary requirement will be permitted to invest more than 15% of his or her cash compensation from ML & Co. or its subsidiaries in any Partnership unless such employee is an "accredited investor," as defined in rule 501(a) promulgated under the Securities Act of 1933, as amended.

Applicants' Legal Analysis

1. Applicants request an order under sections 6(b) and 17(d) of the Act and rule 17d–1 thereunder to permit the Partnerships to co-invest with the Affiliated Co-investors. Section 6(b) provides that the SEC shall, upon application, exempt any employees' securities company from the provisions of the Act if and to the extent that the exemption is consistent with the protection of investors. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates.

2. ML & Co. and its affiliates (as such term is defined in the Act) may be deemed to be affiliated persons of the General Partner under the Act. The General Partner is an affiliated person of the Partnerships within the meaning of the Act. As a result, joint investments by any Partnership with ML & Co. or an affiliate of ML & Co. may be subject to section 17(d). In addition, a co-investment by a Partnership with an Affiliated Co-investor may be subject to section 17(d) to the extent the Affiliated Co-investors is an affiliated person of ML & Co.

3. Rule 17d–1 permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). Applicants represent that the General Partner and its affiliates are concerned with the relationship among themselves and the key employees and directors who invest in the Partnerships and that the Partnerships were organized by ML & Co. to generate and maintain goodwill. In addition, the limited partners of the Partnerships have been informed of the possible Partnerships' dealing with ML & Co. and its affiliates

[1] Investment Company Act Release Nos. 12290 (Mar. 11, 1982) (notice) and 12363 (Apr. 8, 1982) (order).

and as professionals employed in financial services businesses, the limited partners are able to evaluate the risks associated with those dealings. Applicants submit that the composition and operation of the board of directors of the General Partner also will mitigate any potential for disadvantageous treatment of the Partnerships. The board is comprised principally of individuals representing senior management of a diverse group of subsidiaries of ML & Co. who are selected on the basis of their substantive area of expertise. Accordingly, applicants believe that the terms of the relief requested are consistent with the standards in section 6(b) of the Act and rule 17d–1.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. (a) To the extent that a Partnership has funds available for investment, the board of directors of the General Partner will review, among other investments, co-investments with Affiliated Co-investors that may be brought to the attention of the General Partner. The board of directors of the General Partner will make a determination as to whether each particular investment meets applicable investment criteria and is consistent with the existing composition of the Partnership's portfolio in terms of diversification of investments.

(b) The General Partner will commit to a co-investment with an Affiliated Co-investor only if the board of directors of the General Partner, by a majority vote at a properly called and held meeting of the board of directors prior to making the investment, concludes, after consideration of all information deemed relevant, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the Partnership and do not involve overreaching of the Partnership or such partners on the part of any person concerned;

(ii) The transaction is consistent with the interests of the limited partners of the Partnership and is consistent with the Partnership's investment objectives and policies as recited in filings made by the Partnership under the Securities Act of 1933, as amended, its registration statement, and reports to its limited partners; and

(iii) The investment by an Affiliated Co-Investor, or, as permitted by these terms, ML & Co. or an affiliate thereof, in such transaction would not disadvantage the Partnership in the making of its investment, maintaining its investment position, or disposing of the investment and will be made on the same basis as the Affiliated Co-investors and ML & Co. or any of its affiliates.

2. Purchases of an investment pursuant to these conditions in a transaction in which ML & Co. or an affiliate is a participant shall consist of a class of securities also acquired by ML & Co. and/or its affiliate on the same terms (excluding terms as to aggregate purchase price, but including terms as to registration rights, if any, and other rights provided to the purchasers of such investments). Investments made pursuant to the order by a Partnership with an Affiliated Co-investor or with ML & Co. or one of its affiliates will be acquired by the partnership on the same settlement date as acquired by the Affiliated Co-investor and ML & Co. or its affiliates.

3. No investment will be made by a Partnership in any entity in which any other Partnership, ML & Co., or any subsidiary thereof (such three categories being referred to as "Affiliates" for this condition) has previously acquired an interest, provided that this prohibition shall not be applicable to (a) any investment specifically permitted by any other order of the SEC, (b) any investment in a publicly-traded security that is permissible under the Act or the rules thereunder, (c) any investment in an entity in which one or more Affiliates have a prior investment if the securities offered are of the same or senior class of securities held by each such Affiliate and each such Affiliate invests in the subsequent offering on the same terms as a Partnership which does not have a prior investment in that entity, or (d) any investment by a Partnership in an entity in which an Affiliate has made a prior investment, if an institutional investor with total assets of at least $100 million that is not an affiliated person of the Partnership makes an initial investment with the Partnership on the same terms as the Partnership making its initial investment in that entity.

4. If ML & Co. or one of its affiliates[2] elects to sell, exchange, or otherwise dispose of an investment acquired pursuant to these terms that also is held by one or more of the Partnerships, notice of the proposed disposition will be given to the Partnership at the earliest practical time and the Partnership will be given the opportunity to participate in such disposition on a proportionate basis on the same terms as those applicable to ML & Co. or such affiliate. Each Partnership will participate in such disposition if such action is determined by a majority vote at a properly called and held meeting of the board of directors of the General Partner to be in the best interests of the Partnership. Each Partnership will bear its own expenses associated with the disposition of such an investment.

5. If the board of directors of the General Partner, with respect to a Partnership, or ML & Co. or one of its affiliates determines to make a "follow-on" investment (*i.e.*, an additional investment in the same entity) in a particular portfolio company whose securities are held by an Affiliated Co-investor or to exercise warrants or other rights to purchase securities of such an issuer, notice of such transaction will be provided to each Partnership owning securities of such issuer at the earliest practical time. Each Partnership owning securities in an issuer in which the opportunity to make follow-on investments becomes available will participate in such a follow-on investment if the board of directors of the General Partner determines, in the manner required by these conditions, that such action is in the best interests of such Partnership. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The board of directors of the General Partner will review quarterly all information concerning co-investment transactions by the Partnerships with Affiliated Co-investors to determine whether all such investments made during the preceding quarter complied with the conditions set forth above.

7. At least annually, the General Partner will provide to the Partnerships' limited partners a written list of co-investment transactions by the Partnerships with Affiliated Co-investors.

8. The General Partner will maintain the records required by section 57(f)(3) of the Act and will comply with the provisions of section 57(h) of the Act, as if each Partnership were a business development company, all of which will be available for inspection by the limited partners of each respective Partnership. All records referred to or required under these conditions will be available for inspection by the SEC. All such records, as they relate to a particular Partnership, will be available

[2] For purposes of conditions 4 and 5, the term "affiliate" of ML & Co. refers to direct and indirect wholly owned subsidiaries of ML & Co. and to other entities with respect to which ML & Co. or any such subsidiary is authorized to cause such entity to provide the opportunity for a Partnership to participate in the sale of an investment with such entity as contemplated by condition 4 or a purchase of a follow-on investment as contemplated by condition 5.

for review by limited partners of that Partnership.

9. In any case where co-investments are made with an Affiliated Co-investor, any individual involved in the management of both the Partnerships and the Affiliated Co-investor will not participate in the Partnerships' determination of whether to effect any co-investment transaction.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–11342 Filed 5–10–94; 8:45am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2716]

Illinois; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 26, 1994, I find that the Counties of Cass, Champaign, De Witt, Douglas, Iroquois, Menard, Sangamon and Vermilion in the State of Illinois constitute a disaster area as a result of damages caused by severe storms and flooding on April 9, 1994 and continuing. Applications for loans for physical damage may be filed until the close of business on June 24, 1994, and for loans for economic injury until the close of business on January 26, 1995, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308,

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous Counties may be filed until the specified date at the above location: Brown, Christian, Coles, Edgar, Ford, Kankakee, Logan, Macon, Macoupin, Mason, McLean, Montgomery, Morgan, Moultrie, Piatt, and Schuyler Counties in Illinois and Benton, Newton, Vermillion and Warren Counties in the State of Indiana.

The interest rates are:

For Physical Damage: Homeowners With Credit Available Elsewhere—7.125; Homeowners Without Credit Available Elsewhere—3.625; Businesses With Credit Available Elsewhere—7.125; Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000; Others (Including Non-Profit Organizations) With Credit Available Elsewhere—7.125.

For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000.

The number assigned to this disaster for physical damage is 271606 and for economic injury the numbers are 825400 for Illinois and 825500 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 49002 and 59008).

Dated: May 4, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–11298 Filed 5–10–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2717]

North Carolina; (with contiguous counties in South Carolina) Declaration of Disaster Loan Area

Cleveland County and the contiguous countries of Burke, Catawba, Gaston, Lincoln, and Rutherford in the State of North Carolina and Cherokee and York Counties in the State of South Carolina constitute a disaster area as a result of damages caused by flooding and tornadoes which occurred March 27 through 29, 1994. Applications for loans for physical damage may be filed until the close of business on July 5, 1994 and for economic injury until the close of business on February 3, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308.

or other locally announced locations.

The interest rates are:

For Physical Damages: Homeowners With Credit Available Elsewhere—7.250 percent; Homeowners Without Credit Available Elsewhere—3.625 percent; Business With Credit Available Elsewhere—7.700 percent; Business and Non-Profit Organizations Without Credit Available Elsewhere—4.000 percent; Others (Including Non-Profit Organizations) With Credit Available Elsewhere—7.125 percent;

For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000 percent.

The number assigned to this disaster for the State of North Carolina are 271706 for physical damage and 825600 for economic injury, and in South Carolina the numbers are 271806 and 825700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008

Dated: May 3, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–11297 Filed 5–10–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2714]

Oklahoma; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 21, 1994, I find that Ottawa County constitutes a disaster area as a result of damages caused by severe storms and flooding beginning April 14, 1994 and continuing. Applications for loans for physical damage may be filed until the close of business on June 21, 1994, and for loans for economic injury until the close of business on January 23, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, suite 102, Fort Worth, Texas 76155.

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Craig and Delaware Counties in the State of Oklahoma; Cherokee County in the State of Kansas; and McDonald and Newton Counties in the State of Missouri.

The interest rates are:

For Physical Damage: Homeowners With Credit Available Elsewhere—7.125%; Homeowners Without Credit Available Elsewhere—3.625%; Businesses With Credit Available Elsewhere—7.125%; Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000%; Others (Including Non-Profit Organizations) With Credit Available Elsewhere—7.125%.

For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000%.

The number assigned to this disaster for physical damage is 271406 and for economic injury the numbers are 825000 for Oklahoma, 825100 for Kansas, and 825200 for Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 4, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–11299 Filed 5–10–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2712]

Tennessee; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 14, 1994 and an amendment on April 21, I find that the Counties of Blount, Bradley, Hamblen, Hamilton, Jefferson, Monroe, Polk, Sevier and Unicoi in the State of Tennessee constitute a disaster area as a result of damages caused by extensive rainfall and flash flooding which occurred March 25 through April 3, 1994. Applications for loans for physical damage may be filed until the close of business on June 13, 1994, and for loans for economic injury until the close of business on January 17, 1995, at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bledsoe, Bradley, Carter, Cocke, Grainger, Greene, Hawkins, Jefferson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Rhea, Sequatchie and Washington in the State of Tennessee; Catoosa, Fannin, Murray, Walker and Whitfield in the State of Georgia; and Cherokee, Graham, Haywood, Madison, Mitchell, Swain and Yancey in the State of North Carolina.

The interest rates are:

For Physical Damage: Homeowners With Credit Available Elsewhere—7.250 percent; Homeowners Without Credit Available Elsewhere—3.625 percent; Business With Credit Available Elsewhere—7.900 percent; Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000 percent; Others (Including Non-Profit Organizations) With Credit Available Elsewhere—7.125 percent.

For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000 percent.

The number assigned to this disaster for physical damage is 271206 and for economic injury the numbers are 824600 for Tennessee, 822100 for Georgia, and 824700 for North Carolina. (Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 3, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–11301 Filed 5–10–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 2000]

Finding of No Significant Impact: MG Industries, Inc., pipeline at Otay Mesa, CA

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to amend MG Industries permit to authorize installation of a third pipeline in the existing right of way across the U.S.-Mexico border in San Diego County, California.

SUMMARY: The Department of State has conducted an environmental assessment of the proposal to amend MG Industries permit authorizing installation of a third pipeline to transport liquid argon alongside two existing pipelines across the U.S.-Mexico international boundary. Based on the environmental assessment and after reviewing all comments, the Department of State has concluded that amendment of the existing Presidential Permit will not have a significant effect on the human environment. Consequently, no environmental impact statement was prepared.

FOR FURTHER INFORMATION ON THE PIPELINE PERMIT AMENDMENT, CONTACT: Donald E. Grabenstetter, Office of Global Energy, room 3535, Department of State, Washington, DC, 20520, (202) 647–4557.

FOR FURTHER INFORMATION ON THE ENVIRONMENTAL ASSESSMENT, CONTACT: Evelyn Wheeler, Office of Ecology, Health and Conservation, room 4325, Department of State, Washington, DC, 20520, (202) 647–3367.

SUPPLEMENTARY INFORMATION: MG Industries, Inc., has applied for an amendment to a Presidential Permit issued September 4, 1991 authorizing installation of a third pipeline carrying liquid argon alongside two existing pipelines carrying oxygen and nitrogen across the U.S.-Mexico border at Otay Mesa, California. Argon is an inert, colorless, odorless gas that is a natural component of the earth's atmosphere. The liquid argon has been transported by tank truck. The U.S. Customs Service requested installation of a pipeline to facilitate border inspection and control.

The Department of State has concluded that amendment of the permit will not have a significant effect on the human environment. This finding is based on an environmental assessment conducted by the Department of State.

The proposed installation of a new pipeline will require no new construction. The lid of the existing concrete duct containing two existing pipelines will be lifted and the third (two inch) pipeline installed. The material to be conveyed in the new pipeline, liquid argon, is an inert, colorless, odorless gas that is a naturally occurring component of the atmosphere. Thus, any release of the argon would have no environmental consequence.

Dated: April 27, 1994.

Joan E. Spero,

Under Secretary of State for Economic and Agricultural Affairs.

[FR Doc. 94–11460 Filed 5–10–94; 8:45 am]

BILLING CODE 4710–07–M

Office of Defense Trade Controls

[Public Notice 2001]

Reinstatement of Export/Retransfer Privileges Pursuant to Section 38(g)(4) of the Arms Export Control Act

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of persons who had export/retransfer privileges reinstated pursuant to section 38(g)(4) of the Arms Export Control Act, (the AECA), (22 U.S.C. 2778(g)(4)) and section 127.11(b) (formerly section 127.10(b)) of the International Traffic in Arms Regulations, (the ITAR), (22 CFR parts 120–130) during the period from 1987 through 1993.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant Jr., Chief, Compliance Enforcement Branch, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Section 38(g)(4)(A) of the AECA and section 127.11(a) of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes enumerated at section 38(g)(1) of the AECA and section 120.27 of the ITAR. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including

governmental entities. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end user of any item to be exported.

The statute permits export/retransfer privileges to be reinstated on a case-by-case basis after consultation with the Departments of Treasury and Justice, after a thorough review of the circumstances surrounding the conviction or ineligibility to export, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns and ensure future compliance.

In accordance with these authorities the following persons had export/retransfer privileges reinstated pursuant to section 38(g)(4) of the AECA and section 127.11(b) of the ITAR. The reinstatements occurred between December 22, 1987 and April 15, 1993:

1. American Aviation Parts and Service Corporation, Arlington, Virginia, effective September 26, 1988;
2. Napco Inc., Terryville, Connecticut, subsidiary of Thermo Electron Corp., effective October 11, 1988;
3. Environmental Tectonics Corp., Southhampton, Pennsylvania, effective April 21, 1989;
4. Napco International Inc., Hopkins, Minnesota, Venturian Corp. parent company, effective August 1, 1989;
5. Olin Corp., East Alton, Illinois, effective January 4, 1990;
6. Elder Industries, Inc., Newport Beach, California, effective October 1, 1990;
7. Charlotte Aircraft Corp., Charlotte, North Carolina, effective January 4, 1992;
8. Technical Service International, Miami, Florida, effective January 9, 1992;
9. Mr. Clifford Kapel, Technical Service International, Miami, Florida, effective January 9, 1992;
10. Mr. George McArthur Posey, Newport Aeronautical Sales, Costa Mesa, California, effective April 3, 1992; and
11. Forway Industries, Woodbury, New York, effective June 15, 1993.

The effect of this notice is to inform the public that these persons are eligible once again to participate in the export or transfer of defense articles or defense services subject to section 38 of the AECA and the ITAR.

Dated: April 28, 1994.

William B. Robinson,

Director, Office of Defense Trade Controls, Department of State.

[FR Doc. 94–11459 Filed 5–10–94; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Central Florida Regional Airport Sanford, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised future noise exposure map submitted by the Sanford Airport Authority, Sanford, Florida for The Central Florida Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for The Central Florida Regional Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before October 16, 1994. This program was submitted subsequent to a determination by FAA that the associated existing noise exposure map submitted under 14 CFR part 150 for The Central Florida Regional Airport was in compliance with applicable requirements effective September 16, 1993.

EFFECTIVE DATE: The effective date of the FAA's determination on the revised future noise exposure map and of the start of its review of the associated noise compatibility program is April 19, 1994. The public comment period ends June 18, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397, (407) 648–6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: The notice announces that the FAA finds that the revised future noise exposure map submitted for The Central Florida Regional Airport is in compliance with applicable requirements of part 150, effective April 19, 1994. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 16, 1994. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties to the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Sanford Airport Authority, Sanford, Florida, submitted to the FAA on March 8, 1994, a revised future noise exposure map, descriptions and other documentation which were produced during the Central Florida Regional Airport FAR part 150 Study conducted between September, 1992 and February, 1994. It was requested that the FAA review this material as the future noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the revised future noise exposure map and related descriptions submitted by the Sanford Airport Authority, Sanford, Florida. The specific map under consideration is "Future (1998) DNL Noise Contours With Recommended Controls" in the submission. The FAA has determined that this map for The Central Florida Regional Airport is in compliance with applicable requirements. This determination is effective on April 19, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a funding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's

data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150 that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for The Central Florida Regional Airport, also effective on April 19, 1994. Preliminary review of the submitted material indicated that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 16, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonable consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the program with specific reference to these factors. All Comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130 Orlando, Florida 32827–5397.

Sanford Airport Authority, Central Florida Regional Airport, 2735 Mellonville Avenue, Sanford, FL 32772-0816.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, April 19, 1994.

W. Dean Stringer,

Assistant Manager, Orlando Airports District Office.

[FR Doc. 94–11408 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Davidson County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Nashville Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Wright B. Aldridge, Jr., Planning, Environment and Research Engineer, Federal Highway Administration, 249 Cumberland Bend Drive, Nashville, TN 37228; Telephone (615) 736–7106.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation and the City of Nashville will prepare an environmental impact statement (EIS) on a proposal to improve access through the Nashville Central Business District, extending from Interstate Route (I–40) and Demonbreun Street to Interstate Routes 24/65 (I–24/65) and Shelby Avenue in Nashville, Tennessee. The proposed improvement would primarily use existing streets and would include the reconstruction of existing or construction of new structures over both the CSX Railroad and the Cumberland River, replacing the existing Demonbreun Street Viaduct and the Shelby Avenue Bridge, depending upon the choice of proposed alternatives. Improvements to the corridor are considered necessary to provide for both present and projected traffic needs.

Options under consideration include (1) widening the existing corridor which includes the Demonbreun Street Viaduct, Demonbreun Street and the Shelby Avenue Bridge, and (2) utilizing other corridors south of the existing alignment and constructing new structures over the River and Rialroad. A total of four build alternatives are being considered.

Letters describing the proposed action and soliciting comments were sent to appropriate federal, state and local agencies on April 12, 1994. A public meeting soliciting comments on the included alternatives was held on March 3, 1994. A public hearing will be held at a future date. Public notice will be given of the time and place of this hearing. The Draft EIS will be available for public and agency review and comment. These activities are providing input regarding the scope of the EIS.

To ensure that the full range of issues to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding state and local clearinghouse review of federal and federally assisted programs and projects apply to this program.)

Issued on: April 25, 1994.

Wright B. Aldridge, Jr.,

Planning, Environment and Research Engineer, Tennessee Division, Nashville, Tennessee.

[FR Doc. 94–11316 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with title 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and petitioner's arguments in favor of relief.

Canadian National Railway Company (CN)

Since the turn of the century, CN and its predecessor has operated trains over its Sprague Subdivision between

Winnipeg, Manitoba and Thunder Bay, Ontario, a distance of 433 miles. Approximately 44 miles of this trackage traverses the State of Minnesota between International Boundary and Rainy River. A minimum of 12 CN trains per day operate between Winnipeg and Thunder Bay over this line with mainly traffic originating and terminating in Canada. CN has always considered this bridge traffic to be a Canadian operation and has operated all such trains in compliance with all Canadian regulations. Certain regulations of the FRA differ from Canadian regulations. Canadian locomotives and cars which are to be interchanged in the United States are built or modified to be in compliance with FRA standards and are designated for "International Service". In addition to the above "bridge trains", a minimum of six daily "International Service" trains are operated on the Sprague Subdivision between Winnipeg and Duluth, Minnesota. The waivers are requested for the "bridge trains" only. Following are the individual petitions involved.

FRA Docket Number RSGM–93–30

Canadian requirements for locomotive and caboose glazing are similar to those of the FRA except Canada does not mandate retrofit of equipment built prior to November 19, 1982, whereas FRA requires that basically all equipment be retrofitted. The area of operation is remote and there have been no incidents or injuries related to glazing. Locomotives and cabooses designated for International Service do meet FRA requirements. CN seeks a waiver for "bridge trains" on the Sprague Subdivision from the requirements of §§ 223.11(c) and 223.13(c) that locomotives and cabooses be equipped with FRA certified glazing by June 30, 1984.

FRA Docket Number RSRM–93–1

Canadian rules for rear end markers allow retroreflective markers as opposed to the highly visible marker light required by 49 CFR part 221. CN has approximately 720 rear end-of-train telemetry devices with the reflective material and 113 with FRA flashing red markers. The latter are designated for International Service. CN estimates that at least 100 additional devices with lights would be required on the Sprague Subdivision at an overall cost of $1,800 each. CN states that all trains operated on the Sprague Subdivision are governed by centralized traffic control (CTC) and train separation is ensured by two separate mechanisms. A Rail Traffic Controller supervises the movement of all trains, controlling signals at junctions, sidings, etc. An automatic intermediate signal system is actuated automatically by the train within a particular block. In the 15 years of operation with CTC on this subdivision, no rear end collision has occurred. CN seeks a waiver of compliance from the requirements part 221 for all "bridge trains" on the Sprague Subdivision.

FRA Docket Number LI–93–16

Title 49 CFR § 229.123 requires that "each lead locomotive be equipped with an end plate that extends across both rails, a pilot, or a snowplow." Presently, 95 percent of CN's locomotives meet this requirement. To equip the remaining 50 locomotives would cost approximately $1,000 each. Only rarely would one of these locomotives be in the lead on a train on the Sprague Subdivision. There has never been an accident or injury attributable to these locomotives on this subdivision. CN seeks a waiver of compliance from the provisions of 49 CFR 229.123 for all "bridge trains" on the Sprague Subdivision.

CN tests and inspects its locomotives at least once every 3 months as required by Canadian Transport Board Order O–21 and the results are documented on a form, one copy of which is displayed in the cab of the locomotive. FRA has similar inspection, test and documentation requirements each 92 days. FRA also requires that each locomotive be inspected at least once during each calendar day and that the record of the inspection be maintained. Canadian daily inspection requirements differ in that only the lead locomotive safety control devices are certified as operating. In addition, engineers are required to report and record locomotive defects found enroute. CN feels all safety requirements are satisfied by their system. CN seeks a waiver of compliance with 49 CFR § 229.23 and § 229.21 for all "bridge trains" on the Sprague Subdivision.

FRA Docket Number SA–93–10

Road locomotives with corner stairways operated in the United States must be equipped with an uncoupling lever that is operable from both the ground and the bottom stairway opening. Many through train locomotives operating over the Sprague Subdivision do not comply with this requirement and uncoupling cannot be achieved from the side steps. CN has 131 locomotives which cannot be operated from the side steps and it would cost approximately $500 per locomotive to bring them into compliance. CN seeks a waiver of compliance with 49 CFR 231.29 on all "bridge trains" on the Sprague Subdivision.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–93–30, etc. and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before June 10, 1994 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC. 20590.

Issued in Washington, DC, on May 6, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–11412 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–06–P

Petition for Exemption or Waiver of Compliance

In accordance with title 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–94–4), and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before June 10, 1994, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Cape May Seashore Lines (CMSX); Waiver Petition Docket Number RSGM–94–4

The CMSX seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three self-propelled passenger cars. CMSX has exclusive rights to operate rail passenger service on the 27-mile long rail line between Tuckahoe and Cape May, New Jersey. Initially, two services will be provided; a tourist train ride between Cape May and Cape May Court House, New Jersey, a total distance of 12 miles and a shuttle service between Cape May and Rio Grande, New Jersey, a distance of 6 miles. Self-propelled Rail Diesel Cars built in 1950 and 1951, will be used in both operations. The cars are presently equipped with laminated safety glass.

Adrian and Blissfield Railroad Company (ABRX); Waiver Petition Docket Number RSGM–94–5

The ABRX seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one passenger car. The car, which was built in 1949, is used in excursion service between Adrian and Blissfield, Michigan, a distance of approximately 10 miles. The railroad operates in a rural area and there have been no incidents of vandalism in three years.

Wisconsin Central LTD. (WC); Waiver Petition Docket Number RSGM–94–6

The WC on behalf of their customer Flambeau Papers, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The locomotive, an EMD Model SW–1 built in 1950, is used primarily in the Flambeau plant but is used approximately 30 minutes each day in picking up and setting out cars in the WC Yard at Park Falls, Wisconsin. The distance traveled on the WC is approximately 1 mile.

Newburgh and South Shore Railroad Company (NSR); Waiver Petition Docket Number RSGM 94–7

The NSR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The locomotives are used in switching service to the NSR within the Cleveland, Ohio, switching district. The locomotives were formerly owned by the Newburgh and Southern Railway and were covered by waiver RSGM–80–38.

Dubois County Railroad (DCRR); Waiver Petition Docket Number RSGM–94–8

The DCRR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The DCRR operates over 16 miles of track between Dubois and Huntingburg, Indiana. The railroad states there has been no problem with vandalism in this rural area. The locomotive, a 1000 hP ALCO switcher built in 1953, is now equipped with safety glass.

Issued in Washington, DC on May 6, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–11413 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

Annual List of Nonconforming Vehicles Determined To Be Eligible for Importation; Correction

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

ACTION: Correction to annual list of nonconforming vehicles determined to be eligible for importation.

SUMMARY: This document corrects a notice published on February 23, 1994 (59 FR 8671) listing all vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards that NHTSA has determined, as of December 31, 1993, to be eligible for importation into the United States under section 108(c)(3)(C)(1) of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1397(c)(3)(C)(i). As published, the list contained several typographical errors that are corrected as follows:

1. The model type identified for the Mercedes-Benz vehicle listed under VSP No. 23 was "500SEL." This is corrected to read "500SL."

2. The import eligibility number identified for the 1986 Volkswagen Scirocco was "VSA No. 42." This is corrected to read "VSP No. 42."

3. The model number identified for the Volkswagen vehicle listed under VSP No. 49 was "911." This is corrected to read "119."

Authority: 15 U.S.C. 1397(c)(3)(C)(iv); 49 CAR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 3, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–11415 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–74; Notice 2]

Withdrawal of Petition for Import Eligibility Determination

The National Highway Traffic Safety Administration ("NHTSA") published notice in the **Federal Register** on October 26, 1993 (58 FR 57666) that it had received from Champagne Imports, Inc. of Lansdale, Pennsylvania, a Registered Importer of motor vehicles, a petition for a determination that a 1993 Jaguar XJ6 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States. Such a petition may be granted under section 108(c)(3)(C)(i)(I) of the National Traffic and Motor Vehicle Safety Act and 49 CFR part 593 if the Registered Importer demonstrates (1) that the vehicle is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) that it is capable of being readily modified to conform to the standards. Following publication of the notice, Champagne Imports informed NHTSA that it was unable to demonstrate such compliance for the 1993 Jaguar XJ6 and that, accordingly, its petition was being withdrawn.

NHTSA possesses insufficient information to determine independently whether the 1993 Jaguar XJ6 is capable of being readily modified to conform to the standards, and therefore will make no decision regarding that vehicle at this time.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 3, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–11414 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATON

Research and Special Programs Administration

[Notice No. 94-5]

Carbon Fiber Composite Cylinder Technology Symposium

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public symposium.

SUMMARY: RSPA will host a public symposium on carbon fiber composite technology and its application to the design of overwapped metallic cylinders for transportation of compressed gases.

DATES: The symposium will be held May 26, 1994 at 8:30 a.m. to 4 p.m., but may conclude prior to 4 p.m.

ADDRESSES: The symposium will be held at the Department of Transportation, Nassif Building, room 4236, 400 Seventh Street, S.W., Washington, DC 20590-0001.

FOR FURTHER INFORMATION CONTACT: Gopala Vinjamuri, telephone (202) 366-4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20590-0001.

SUPPLEMENTARY INFORMATION: RSPA will host a public symposium on carbon fiber composite technology and its application to the design of over-wrapped metallic cylinders for transportation of compressed gases in commerce. The purpose of this symposium is to obtain information on state-of-the art carbon fiber composite technology, experience in prolonged use under normal and extreme temperatures, and applications to pressurized cylinders. The symposium is structured toward the presentation of technical papers from industry and government experts and follow-up discussions. RSPA anticipates hearing from representatives of the Compressed Gas Association and composite cylinder manufacturers. Other persons interested in presenting technical papers should contact RSPA in advance.

Carbon fiber composite pressure vessel technology is being used in aerospace applications, such as in pressure vessels and rocket motor casings. Application of this advanced technology to the commercial transportation of compressed gases in high pressure cylinders may offer a significant weight and efficiency advantage over current packaging systems without compromising safety. However, safety considerations differ between the design of aerospace vehicles and support systems and the design of cylinders that transport compressed gases in commerce. Issues of most concern to RSPA include materials technology, cylinder design and fabrication, and quality assurance. There also will be a presentation and discussion on the performance of a failure mode and effects analysis when considering the use of of advanced technologies in the design of compressed gas cylinders. This symposium will not address issues relating to compressed natural gas fuel systems for vehicles.

Issued in Washington, DC, on May 6, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–11416 Filed 5–10–94; 8:45 am]

BILLING CODE 4910–60–M

Pipeline Safety Advisory Bulletin ADB–94–04 Offshore Operators, Emergency Planning Coordination

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory to offshore pipeline operators on coordinating emergency planning with offshore producers.

SUMMARY: This advisory calls the attention of offshore pipeline facility operators to a safety recommendation by the National Transportation Safety Board (NTSB) regarding the need for emergency planning and coordination between themselves and offshore producers.

Advisory

As a result of NTSB accident report NTSB/PAR–90/02 and NTSB Safety Recommendation P–90–31, on an incident on October 3, 1989, involving a Natural Gas Pipeline Company of America (NGPL) underwater transmission line in the Gulf of Mexico, this advisory bulletin informs offshore pipeline operators of the following report findings:

(a) The accident report records the following shortcomings in the transmission line operator's emergency plan for offshore emergencies (NTSB's rationale is in parenthesis):

(1) Inadequate guidance for Gas Control personnel on notification procedures (when NGPL Gas Control personnel were first notified of the accident, they failed to contact the district superintendent directly).

(2) Inadequate guidance on the duties and responsibilities of the emergency coordinator (the district superintendent failed to properly fulfill his duties as emergency coordinator because of a lack of guidance in the NGPL emergency plan).

(3) Inadequate guidance for liaison and coordination with public officials (although the NGPL emergency plan listed a telephone number for the Coast Guard, NGPL took no action to establish liaison with local Coast Guard officials).

(4) Inadequate guidance for liaison and coordination with offshore producers (neither the NGPL emergency plan nor the district superintendent had an emergency telephone number with which to contact personnel responsible for the unmanned offshore production platform where automatic shutdown equipment was located and which failed to shut off gas flow into the failed pipeline).

(b) With respect to item (a)(3) above, the requirements for emergency plans in 49 CFR 192.615 for gas pipelines, and similar requirements in 49 CFR 195.402(e) for hazardous liquids pipelines, require operators to establish and maintain adequate communication and liaison with appropriate fire, police and other public officials. As noted in (a)(3) above, the operator failed to establish adequate means of communication and liaison with the local Coast Guard (public officials) as required by 49 CFR 192.615.

Background

This advisory bulletin is based on two offshore pipeline failures and an NTSB safety recommendation.

In March 1989, an ARCO production platform in the Gulf of Mexico was engulfed in flames and destroyed when a sudden release of gas ignited during repairs to a Southern Natural Gas Company (SONAT) 18" offshore pipeline. There were seven fatalities. In preparing for the repair work, SONAT began venting the pipeline to atmosphere through piping at the ARCO platform. Unfortunately, and unbeknown to SONAT, venting came to a halt when ARCO personnel isolated the platform by closing valves on all pipelines entering the platform, including SONAT's 18" pipeline (ARCO did this in preparation for some platform maintenance work). As a result, the 18" pipeline which the SONAT crew began to repair, and which

they thought had been safely vented free of flammables, still contained some gas and liquids. A cutting machine was being used on the pipeline's 18" riser at the platform, and as cutting neared completion, the pipe separated unexpectedly, releasing gas and liquids which ignited. In the judgment of Federal accident investigators, a lack of adequate coordination between both the producer's (ARCO) and the pipeline operator's (SONAT) field personnel was a significant contributing factor.

In October 1989, another pipeline failure involving fatalities occurred in the Gulf of Mexico. A fishing vessel, the Northumberland (crew of 14), punctured an NGPL 16" underwater transmission line carrying natural gas at 835 psig pressure. The escaping gas ignited almost immediately, creating a fireball which completely destroyed the vessel. Eleven (11) crew members perished. The incident happened at approximately 6:00 PM. However, gas flow feeding the fire was not fully shut off for over three hours, until shortly after 9:15 PM.

According to the NTSB report, a major contributing factor in this long delay was the lack of a telephone number for contacting the operators of an unmanned production platform [refer to (a)(4) above]. As a result, NTSB Safety Recommendation P-90-31 was issued to RSPA, as follows:

> Evaluate, with the assistance of the Minerals Management Service, the need for emergency planning and coordination between offshore pipeline operators and producers, and then implement, if necessary, appropriate safety regulations.

The NTSB report also noted an inadequacy involving communications with local Coast Guard officials [refer to (b) above] and shortcomings [refer to (a)(1) through (a)(5) above].

Issued in Washington, DC, on May 5, 1994.

George W. Tenley, Jr.

Associate Administrator for Pipeline Safety.

[FR Doc. 94-11359 Filed 5-10-94; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974: Deletion of Systems of Records Notices

AGENCY: Departmental Offices, Treasury.

ACTION: Notice to delete Privacy Act systems of records.

SUMMARY: The Department of the Treasury is deleting the following systems from its inventory of Privacy Act systems of records notices.

Treasury/DO .003—Personnel Working Files;
Treasury/United States Mint .006—Examination Reports of Coins Forwarded to the Mint from U.S. Secret Service;
Treasury/United States Mint .010—Purchases and Sales of Precious Metals; and
Treasury/United States Mint .001—Redemption of Uncurrent or Mutilated Coins.

EFFECTIVE DATE: May 11, 1994.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Privacy Act Officer, Disclosure Services, Department of the Treasury, Washington, DC 20220, Telephone: (202) 622-0930.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Department of the Treasury conducted a review of several of its Privacy Act systems of records. The records covered by Treasury/DO .003—Personnel Working Files, are used by office directors within the Departmental Offices for basic factual data about an individual's employment while at the Department of the Treasury. Records in this system are used in various ways by office directors or other supervisory personnel, including screening qualifications of employees; determining status, eligibility, recommendations for promotions and/or suspensions, performance appraisals, and other information needed to conduct day-to-day personnel administration.

It has been determined that Treasury/DO .003—Personnel Working Files, duplicates the government-wide system of records covered by OPM/GOVT-1—General Personnel Records, established by the Office of Personnel Management. Treasury/DO .003 also contains records covered by OPM/GOVT-2—Employee Performance File System Records, and OPM/GOVT-3 Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers. Therefore, Treasury/DO .003—Personnel Working Files, is being deleted from Treasury's inventory of Privacy Act systems of records. The system notice was last published in its entirety in the **Federal Register**, Vol. 57, page 13905, April 17, 1992.

There systems of records maintained by the United States Mint were reviewed and it was determined the records were no longer subject to the Privacy Act. System of records Treasury/United States Mint .006—Examination Reports of Coins Forwarded to Mint from U.S. Secret Service, no long maintains the records on individuals and the information is not retrievable by name or other personal identifier. Treasury/United States Mint .010—Purchases and Sales of Precious Metals, is being deleted because the U.S. Mint no longer purchases precious metals from individuals. The system of records titled Treasury/United States Mint .011—Redemption of Uncurrent or Mutilated Coins, is being deleted because the records are not retrievable by name or other personal identifier. The system notices were last published in their entirely in the **Federal Register**, Vol. 57, pages 14117, 14119 and 14120 respectively, on April 17, 1992.

Dated: May 4, 1994.

G. Dale Seward,

Acting Deputy Assistant Secretary (Administration).

[FR Doc. 94-11320 Filed 5-10-94; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 90
Wednesday, May 11, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 23094, May 4, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 P.M. (Eastern Time) Tuesday, May 10, 1994.

CHANGE IN THE MEETING:

Open Session

The item listed below has been removed from the agenda:

4. Extension of Comment Period on the Proposed Consolidated Guidelines on Harassment.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: May 9, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued May 9, 1994.

[FR Doc. 94–11576 Filed 5–9–94; 2:16 pm]

BILLING CODE 6750–06–M

UNITED STATES INSTITUTE OF PEACE

BILLING CODE: BAC 6820–AR.

TIME AND DATE: 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 9, 1994.

Richard H. Solomon,

President, United States Institute of Peace.

[FR Doc. 94–11519 Filed 5–9–94; 10:38 am]

BILLING CODE 3155–01–M

federal register

Wednesday
May 11, 1994

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 98, et al.
Child Care and Development Block Grants and Aid to Families With Dependent Children and Child Care Programs; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 98

Administration for Children and Families

45 CFR Parts 255, 256 and 257

RIN 0970–AB33

Aid to Families With Dependent Children Child Care Program, Transitional Child Care and At-Risk Child Care; Child Care and Development Block Grant

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Proposed rule.

SUMMARY: The Administration for Children and Families (ACF) proposes to amend the regulations for the Child Care and Development Block Grant (CCDBG), child care serving Aid to Families with Dependent Children (AFDC) families, the Transitional Child Care program (TCC), and At-Risk Child Care program.

The purpose of this proposal is to support States, Territories and Tribes in their efforts to increase the availability and quality of federally-subsidized child care, develop more coordinated delivery systems, and improve child care opportunities for families, providers and communities.

The proposed rule is presented in a single package because of our intent to remove regulatory barriers to program coordination, to increase flexibility across the four programs, and to promote common goals. The proposed rule addresses certain key areas of mutual concern for operation of these programs: Accessibility to higher quality care through amended payment rates; adaptation of payment policies for children with special needs as a result of the Americans with Disabilities Act; impact of the Fair Labor Standards Act and other Federal and State statutes on in-home care; and deletion of provisions, known as the effects test, which may be construed as minimizing regulatory protection for children in care concerning State implementation of health and safety standards.

The proposed amendments to the CCDBG regulations additionally include technical amendments required by the Juvenile Justice and Delinquency Prevention Amendments of 1992 and the Older Americans Act Technical Amendments. Other proposals respond to general concerns about payment differentials for quality care, children's immunizations, eligibility of children in foster care, availability of certificates as a payment mechanism, and cost limitations for administration and certain other activities.

The proposed amendments to the regulations for child care for AFDC families, TCC, and At-Risk Child Care promote coordination among these programs and also with CCDBG to: provide State flexibility in determining a child's physical or mental incapacity; modify and codify policy regarding child care during gaps in employment; require States to define how child care is reasonably related to the parent's work or other activity; and allow States flexibility to conform family fee requirements. Additionally, proposed amendments to TCC would give States the option to provide TCC to families who voluntarily terminate their AFDC benefit, and address the process of requesting TCC.

DATES: Interested persons and agencies are invited to submit written comments concerning these proposed regulations no later than July 11, 1994.

ADDRESSES: Comments should be mailed (facsimile transmissions will not be accepted) to the Assistant Secretary for Children and Families, Attention: Child Care Comments, OFA/DJP, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, or delivered to the Administration for Children and Families, Office of Family Assistance, Aerospace Building, Fifth Floor East, 901 D Street, SW., Washington, DC between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact persons shown below.

FOR FURTHER INFORMATION CONTACT: For questions concerning the title IV–A child care programs, please contact Mary Ann Higgins, Director, Division of JOBS Program, Fifth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401–9294. For questions concerning the Child Care and Development Block Grant, please contact Helen Morgan Smith, Acting Director, Division of Child Care, Hubert Humphrey Building, room 352G, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 690–6241. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Background

The Administration for Children and Families (ACF) administers a number of programs that address the child care needs of low-income families. In recent years, the scope of ACF-administered child care programs was broadened to address the child care needs of increasingly larger segments of the population. ACF's child care programs reflect a growing awareness of the needs of the family for safe child care that also attends to the developmental needs of children. They offer the Nation's low income families an important support in their efforts to achieve and maintain economic independence.

Child care needs for working families who receive Aid to Families with Dependent Children (AFDC) benefits were first addressed through the dependent care disregard. The family's child care expense (up to $200 a month for a child under age 2 and up to $175 for a child who is at least age 2) is deducted from the family's earnings when determining the amount of the family's countable income for the purpose of the family's eligibility for and amount of AFDC assistance. The dependent care disregard is used by most States as one method for providing child care to working AFDC families.

The Social Services Block Grant (title XX of the Social Security Act) enables States to provide social services which are best suited to the needs of its residents. These services can include child care, and most States have used title XX funds to provide child care through contracts with providers.

The regulatory changes proposed in this rule concern four child care programs created through two statutes: the Family Support Act of 1988 (Pub. L. 100–485) and the Omnibus Budget Reconciliation Act of 1990 (OBRA 90). A brief description of each program and of the overall goals of this proposed rule follows.

The Family Support Act of 1988 amended title IV–A of the Social Security Act at section 402(g), providing a very significant extension of ACF's ability to fund child care services. The amendment created two new child care programs. First, it guaranteed necessary child care for working AFDC recipients, and for AFDC recipients in approved education or training activities (including the Job Opportunities and Basic Skills Training (JOBS) Program). This program is often called AFDC child care. The regulations for AFDC child care are located at 45 CFR part 255. An amendment concerning applicable child care standards under 45 CFR 255.4 (Allowable Costs and Matching Rates) became effective on August 4, 1992.

Second, the Family Support Act addressed the need for Transitional Child Care (TCC) during the 12 months

after a family becomes ineligible for AFDC due to work. The regulations specific to TCC are located at 45 CFR part 256. However, many of the regulations for AFDC child care (part 255) also apply to TCC.

With OBRA 90, Congress established two additional child care programs that further extended child care services to the Nation's low-income families: an optional At-Risk Child Care program (child care for low-income working families in need of such care and otherwise at risk of becoming eligible for AFDC) and the Child Care and Development Block Grant (CCDBG).

Currently, 49 States and the District of Columbia have approval to operate the At-Risk program. That program, like the other title IV–A child care programs, requires the State to match Federal funds, but, unlike the other programs, it is capped and the funds are distributed according to a formula. The At-Risk Child Care program is located at section 402(i) of title IV–A of the Social Security Act. The At-Risk regulations are located at 45 CFR part 257.

In this preamble, we refer to AFDC child care, TCC, and At-Risk Child Care as the title IV–A programs.

The CCDBG is intended to provide child care services for low-income families and to increase the availability, affordability, and quality of child care and development services. That program does not require a State match. Regulations for the CCDBG program are located at 45 CFR parts 98 and 99.

The Juvenile Justice and Delinquency Prevention Amendments of 1992, Public Law 102–586, made various technical changes to the CCDBG. For example, section 8(a)(1) and (2) of the amendments made changes to section 658J(c) of the Block Grant Act by replacing "obligation period" with "expenditure period." Other minor technical corrections to the Block Grant Act are included in the Older Americans Act Technical Amendments, Public Law 103–171.

Purpose of Proposed Rule

This proposed rule incorporates lessons ACF has learned from our initial experience with the title IV-A and CCDBG programs. Our purpose is to remove barriers, promote coordination, foster higher quality care, and champion the health of our neediest children. We have evaluated State and Tribal child care program plans, conducted many child care program field reviews, sponsored two national child care conferences, held symposia for States and Tribes, and participated in many other conferences and meetings. We have listened as State representatives and others voiced desire for remedies of regulatory barriers to the operation of seamless child care delivery systems and for the ability to deliver higher quality care. This section of the preamble gives an overview of our findings and considerations. These ideas for change are developed in greater detail later in the preamble.

There are four main purposes of this proposed rule. First, it is a vehicle for responding to changes needed to existing regulations to achieve consistency with recently enacted law. We thus propose changes to the CCDBG regulations required by the Juvenile Justice and Delinquency Prevention Amendments of 1992 and the Older Americans Act Technical Amendments. We also propose amendments and provide guidance in the preamble on how payments for special needs children can be made under both title IV-A child care and CCDBG in light of the Americans with Disabilities Act (ADA), Public Law 101–336, enacted on July 26, 1990.

Second, these proposals reflect ACF's desire to help States facilitate operation of the title IV-A and CCDBG programs based on the experiences of both States and families with existing program policy. The changes will give States some immediate relief to certain regulatory barriers. Many of these proposals will permit States to coordinate the four programs better, making services more seamless for child care providers and families. Allowing for greater conformity among the sliding fee scales for title IV-A child care and CCDBG is an example of this kind of effort. Allowing States to determine physical or mental incapacity of children to be served under title IV-A consistent with CCDBG rules is another example.

Third, our objective in proposing these changes is to strengthen States' capacity to ensure the quality of federally-subsidized child care services by removing regulatory barriers. We believe the quality of federally-subsidized child care is important and want to promote safe and healthy environments for children that foster their development and overall well-being. We wish to further foster quality in partnership with the States. Our proposals to foster quality include eliminating the regulation in the CCDBG that limits payment differentials within categories of care to no more than 10 percent. We also propose to allow States to pay the actual charge for higher quality child care for children in title IV-A programs, without regard to the 75th percentile of the local cost of care, for child care that meets State-designated objective standards of quality that exceed the normal licensing or certification requirements.

Finally, the health of children plays an overwhelmingly important role in their well-being and their ability to grow and develop into productive citizens. We therefore propose to amend the CCDBG health and safety standards to require that children receiving CCDBG services receive immunizations.

In sum, this proposed rule goes beyond adoption of technical refinements to ACF-administered child care programs. It represents ACF's efforts to think more broadly about helping States better serve low-income families through subsidized child care.

Statutory Authority

Regulations for the title IV-A child care programs are published under the general authority of 1102 of the Social Security Act which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act. Section 658E of the Child Care and Development Block Grant Act requires that the Secretary shall by rule establish the information needed in the Block Grant plan.

Regulatory Impact Analysis

This proposed rule has been reviewed by the Office of Management and Budget (OMB) pursuant to Executive Order 12866. Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

It was difficult for us to determine the actual cost implications of the regulation because most of the changes are optional with States. We did not know how many States would adopt these options, or whether States would make other programmatic changes which would counteract any potential increases in costs. Therefore, we are explicitly seeking comments on the cost implications of the proposed changes.

We are proposing a new requirement that children be immunized in order to receive services under the Child Care and Development Block Grant. The CCDBG health and safety regulations currently require States and Tribes to

include provisions about immunizations in their CCDBG plans and to provide assurances that requirements with respect to immunizations are in place. In addition, most States already include immunizations in their child care standards. We do not anticipate that our proposal will have a significant negative impact on either grantees or families, since grantees will not be required to provide immunizations directly and families who receive subsidized child care are by law eligible for free immunizations under such federally supported programs as Medicaid, the Early Periodic Screening Diagnosis and Treatment (EPSDT) Program, and the new Vaccines for Children program. The immunization provision was considered the most cost-effective and least burdensome approach because: (1) It helps ensure that vulnerable young children are immunized; (2) immunization of such children is highly cost-effective; and (3) it provides flexibility to grantees in determining how to implement the provision.

Furthermore, it directly supports the President's national immunization initiative, Vaccines for Children, which calls for greater mobilization and expansion of immunization resources to protect the health of our youngest and most vulnerable children.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. The primary impact of these final rules is on State, Tribal and Territorial governments. To a lesser extent the regulation could affect individuals and small businesses. However, the number of small businesses affected should be limited, and the expected economic impact on these businesses would not be so significant that a full regulatory flexibility analysis is indicated.

• First, the regulations retain many provisions designed to ensure broad participation by small businesses in the program. For example, the IV–A entitlement programs provide that individuals must be able to choose among available providers, including family day care providers. The At-Risk program regulations still require that any registration requirements States impose on unlicensed and unregulated providers be simple and timely, and facilitate prompt payment. In the CCDBG program, the regulations still require that parents have a choice among a variety of providers including family day care providers. These and other provisions in the current rules will help ensure that States exercise restraint in imposing any additional requirements on small entities providing child care.

• The proposed rule contains a number of provisions which could result in some decreases in the regulatory and economic burdens on providers who are small businesses. Most importantly, because States will be able to operate their programs under a more consistent set of program rules, participating providers should face a simpler and more streamlined set of regulatory requirements.

• Many of the providers who would potentially be affected are in-home providers. These providers are generally not operating as small businesses, but as domestic employees; thus, any impact on them need not be specifically addressed under this Act.

• The regulation could ultimately result in some additional regulatory requirements or health and safety standards for other providers, such as family day care providers, who are small businesses. However, the impacts on small businesses, if any, would not be directly attributable to this regulation. With the possible exception of the immunization provision, the regulation does not directly propose any expansion of regulatory requirements or health and safety standards on providers; thus, any impacts on providers should only arise as the result of independent State and/or local decisions to impose additional requirements.

The effects tests may have discouraged States from imposing additional requirements—beyond those which were generally applicable—on providers who specifically wanted to participate in these federally supported child care programs. However, we do not believe States have much interest in imposing additional requirements on these providers. First, States and localities know that parents often have difficulty locating child care providers which meet their needs, and that low-income parents frequently have more serious access problems. They do not want to make it appreciably more difficult for providers to participate in the programs which serve low-income families. Secondly, States have limited resources for enforcing and monitoring child care regulations; thus, they are motivated to be selective about imposing requirements. Thirdly, States have an interest in establishing a consistent set of requirements for providers, regardless of their payment sources; differential rules make it more difficult to ensure regulatory compliance and provide a seamless system of services which help families make the transition from welfare to self-sufficiency. Finally, under current rules, State and local governments have full flexibility to set general regulatory requirements and health and safety standards for child care providers. If States (or other grantees) have felt that there was a substantial need for additional requirements (presumably to protect the well-being of children in care), we would have expected them to act under this general authority.

While States generally have immunization requirements for children in child care, the proposed immunization provision might result in some additional children being subject to immunization requirements or stronger requirements for some children. However, States have flexibility in deciding how immunization requirements are to be implemented. Requirements would not necessarily be imposed on providers; rather, States can choose to impose them on eligible families. Thus, the immunization provision in this proposed rule does not directly affect small businesses. Further, where States do choose to impose additional requirements on providers related to the immunization provision, such requirements would be basically administrative in nature (e.g., documentation); we expect the costs of immunization to be covered through other funding sources. Thus, this provision would not have a significant economic impact on affected providers.

Thus, the number of entities affected, and the net economic impact on them, should not be significant.

Paperwork Reduction Act

Certain sections of these proposed regulations contain information collection requirements which are subject to review and approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The proposed revisions for the title IV–A child care programs will produce only minor changes and additions to the State Supportive Services Plan (ACF–106).

Specifically, State plans would be required to include: (1) Policies on "reasonably related" (see § 255.1(e)(4) and § 257.21(a)(6)); (2) definitions of "mentally or physically incapable" (see §§ 255.1(m) and 256.1(a)(5)); and (3) decisions on whether States have opted to provide TCC without formal requests, during gaps, and in voluntary closure situations (§ 256.1(a)(6)). If States take advantage of the other new options available to them, they would also have

to report on their criteria for determining "higher quality" care (§ 255.1(i)(2)) and conditions and limitations for in-home care (§ 255.1(n) and § 257.21(o)). The proposed rule would reduce reporting burden at § 255.1(i) through its elimination of the requirement for surveys of special needs rates.

These amendments to the IV–A State plans are being submitted to OMB.

Similarly, the proposed revisions for the CCDBG program will produce minor changes and additions in the CCDBG plan. Grantee plans will have to include additional information about immunization policies pursuant to the amendments at § 98.41(a)(1) (see § 98.16(a)(10)). Depending on their response to the proposed amendments and clarifications, Grantees may also be revising plan sections on in-home policies (§ 98.16(a)(7)(ii)), the definition of protective services (§ 98.16(a)(6)(vii)), and payment rate differentials (§§ 98.16(a)(12) and 98.43(e)).

Amendments to the CCDBG plans will also be submitted to OMB.

ACF has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding the information collection requirements should direct them to the Administration for Children and Families (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for ACF.

Order of Preamble and Regulations

The preamble begins with a discussion of four areas where the proposed regulations for the title IV–A child care programs and CCDBG address similar issues—payments for higher quality child care, payments for children with special needs, providing in-home care, and the effects test. We first discuss these four issues from a common perspective. But, where needed because the respective statutes for the programs differ, the general discussion on these topics is followed by a discussion of the proposed regulatory change in the context of the specific program, either the Block Grant or the applicable title IV–A program(s). It is our intent that where these proposals address a common issue, the proposed changes result in policies that better enable States to coordinate these programs into a more cohesive child care system. Comments which identify the potential for conflicting policy between programs as a result of these proposals are especially encouraged.

Following the discussion of these four issues, we discuss additional changes specific to the CCDBG (part 98) followed by proposed changes specific to the title IV–A child care programs (parts 255, 256, and 257). The proposed regulations follow the order of the Code of Federal Regulations (CFR) and are presented after the preamble, beginning with the CCDBG followed by the title IV–A child care programs.

PROPOSED CHILD CARE RULE AMENDMENTS, 45 CFR PARTS 98, 255, 256, AND 257

Topic	45 CFR section
Joint Issues	
Payment Rates for Higher Quality Care:	
CCDBG	98.16, 98.43
Title IV–A	255.1, 255.3, 255.4
Payment Rates for Special Needs Care:	
CCDBG	98.16, 98.43
Title IV–A	255.4
In-Home Care:	
CCDBG	98.16
Title IV–A	255.1, 255.3, 255.4, 257.21, 257.40
Effects Test:	
CCDBG	98.30, 98.40, 98.41, 98.43, 98.45
Title IV–A	255.4, 257.41
Child Care and Development Block Grant	
Immunizations	98.41
Foster Care	Preamble clarification
Certificate Availability	98.30
Other Authorized Activities.	98.13, 98.50, 98.52
Availability of Funds and Reporting.	98.2, 98.60, 98.63, 98.70
Title IV–A Child Care	
Reasonably Related	255.1, 257.21
Determining Incapacity.	255.1, 255.2, 256.1, 256.2
Gaps in Employment and Continuity of Title IV–A Child Care.	255.2, 256.1, 256.2, 257.30
Transitional Child Care.	256.1, 256.2, 256.3, 256.4

Payments for Higher Quality Child Care

Both the Federal government and the States have an interest in assuring that the increasing number of the Nation's children who receive child care services benefit from high quality care. This interest applies to all children, whether or not in subsidized care. High quality care provides parents a necessary support service to enable them to participate in work, education, or training. High quality care also provides sound developmental support for the children who comprise our future work force.

Balancing the Federal government's interest in an adequate supply of child care to meet the needs of family self-sufficiency programs with the States' responsibility for regulating the quality of that care is a delicate exercise. We have learned from administering the title IV–A and CCDBG programs that States wish to have more opportunities to recognize higher quality care by compensating providers appropriately. As a result, ACF proposes to amend the payment regulations for both title IV–A and CCDBG child care programs. Along with other amendments described in this proposed rule, these payment amendments will enable States to provide recipients of child care under these programs greater access to higher quality care.

As described more fully below, we propose to eliminate the regulation for the CCDBG that limits payment differentials within categories of care to no more than 10 percent. We also propose to amend the title IV–A child care regulations to allow States to pay the actual cost of care, subject only to the statewide limit, for care that meets the State's definition of higher quality care.

Payments Under CCDBG

We propose to revise §§ 98.16(a)(12)(ii) and 98.43(e) to remove the 10 percent cap on payment differentials within a category of care. In addition, we propose to revise § 98.43(b)(1) and (2) to clarify that the cost of subsidized child care services must be no more than the actual amount billed or charged for non-subsidized care.

The Block Grant Act requires that payment rates take into account the variations in cost of providing child care in different categories, as defined in § 98.2(h), and to children of different age groups, as well as the additional costs of providing child care for children with special needs. Grantees have been required to differentiate among center-based, group home, family, and in-home child care providers. The existing regulations permit grantees to differentiate payment rates within categories of care, if certain conditions are met.

As noted in the preamble to the existing regulations, the limit on payment rate differentials within a category of care was one of the more controversial issues of the regulation. That controversy continues today. In writing the existing regulations, we were persuaded by grantees and child

care advocates that grantees should be permitted to differentiate within categories of care to account for licensing status and considerations of quality, as well as coordination with other child care programs. As a consequence, grantees were permitted to set differential payment rates, with a 10 percent cap, within categories of care. However, in the preamble, we indicated that we would consider amending the regulation if it became apparent that the 10 percent limit was inappropriate or served no useful purpose.

Since publication of the existing regulations, we have conducted program reviews in States and non-exempt Tribes, held a number of meetings attended by States, Territories and Tribes, consulted with many child care advocacy groups and received numerous letters from the Congress and other interested parties. In these contacts, we were told that child care providers meet varying licensing requirements and provide care at varying levels of quality. Grantees have asked for the additional flexibility to set payment rates which provide incentives for becoming licensed and which reflect differences in program quality. A number of grantees have stated that, in setting payment differentials within categories of care, they want to recognize and compensate those child care facilities which have obtained nationally recognized accreditation along with those child care providers who have earned Child Development Associates (CDA) credentials. Additionally, grantees want to take into consideration the differing costs of providing care in licensed, unlicensed, and license-exempt (e.g., relative) settings, and of providing care during non-traditional hours (e.g., evenings and nights).

It has also been pointed out that other child care subsidy programs allow grantees to differentiate within categories of care without imposing any limitation on the amount of the payment differential. As a consequence, some grantees have experienced difficulty in creating a seamless child care system.

Eliminating the 10 percent limitation will give grantees the flexibility to address these areas of concern. As a consequence, we propose to remove the reference to limits on payment differentials in §§ 98.16(a)(12) and 98.43(e). We propose to revise § 98.43(e) and add § 98.16(a)(12)(iii) to require grantees that provide for variations in the payment rate within a category to include a description of how the differential rates within categories of care are determined and to identify the distinctions within categories. Grantees would still be required to ensure that payment rates are sufficient to provide access to child care services comparable to those in the non-subsidized sector.

We are clarifying the regulations at § 98.43(b) (1) and (2) to read "amount charged" instead of costs. We believe this terminology more clearly reflects Federal policy which prohibit the use of Federal dollars to pay more for a service than the provider would charge a non-subsidized family. Oftentimes, the provider may not bill the actual costs, believing that the parent(s) could not afford them. However, providers may well provide those "costs" when responding to market surveys or other "payment rate" questions concerning costs, resulting in receipt of payments which exceed those actually charged. We believe that this revision will eliminate such occurrences. This clarification does not represent a change in policy.

Payments for Higher Quality Care Under Title IV–A Child Care Programs

Currently, Federal Financial Participation (FFP) for title IV–A child care is available for the lowest of the actual charge for care, the local market rate for that category of care or the applicable statewide limit. The local market rate is based on the 75th percentile cost of care in the local area. We continue to believe that the 75th percentile is a reasonable definition of local market rate. This level represents a balance between concerns about fiscal accountability and accessibility to most services. In addition, we believe that requiring local market rates to be set at the 75th percentile has raised the general level of reimbursement to providers. We recognize, however, that the 75th percentile may not be sufficient to purchase some higher quality care. Therefore, to permit States to recognize and reward higher quality care, we propose amending § 255.4(a) to define the actual charge for care that meets the State's objective criteria for higher quality care as the local market rate for such care. We will provide FFP for the actual charge for such care, subject to the statewide limit.

While we recognize that State licensing or regulatory certification contributes to high quality care, we do not believe that licensing or regulation is the sole criterion or indicator of a higher quality of care. The proposed amendment to § 255.4(a) requires that the State-defined higher quality criteria will be in addition to existing State licensing or regulatory requirements. For example, the State's objective criteria for higher quality care might be that providers have a Child Development Associate (CDA) credential coupled with lower than regulatory staff/child ratios, or the State could choose the Head Start Program Performance Standards or other nationally or State-recognized criteria as its criteria for higher quality. We do not propose a national standard or definition for higher quality care.

Similarly, it is not the intention that this regulation be used to circumvent the regulation at § 255.4(a)(2)(iii) which establishes local market rates at the 75th percentile based on a survey of providers in an area. We expect that, because the State's criteria for higher quality care will be above the licensing and regulatory standards generally in effect, the State will make payments at the actual cost (subject only to the statewide limit) under this provision less frequently than payments are made at the 75th percentile. Payments for higher quality care would apply, then, to only a few providers in an area, not the majority of providers. These providers still would be included in local market rate surveys. We are also proposing to amend § 255.1(i) to require States to specify in the Supportive Services Plan their objective criteria for higher quality care.

To be consistent in our terminology, we propose to amend § 255.4(a)(2)(iii) to replace "type" with "category" when referring to various kinds of providers. We propose the same revision for §§ 255.1(i) and 255.3(c).

Payments for Child Care for Children With Special Needs

For the purposes of this section only, in discussing payments for child care, we use the term "special needs" to mean children with mental or physical impairments that substantially limit one or more of the major life activities, i.e., "disabilities" as the term is used in the Americans with Disabilities Act (ADA). Special needs in this preamble discussion does not mean foster care, protective services, bilingual/cultural needs or other broader considerations sometimes attached to the term, for example, for the purpose of targeting as required by the CCDBG regulations at § 98.44(b).

Americans With Disabilities Act

The Americans with Disabilities Act, enacted on July 26, 1990, provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. The ADA is administered by the U.S. Department of Justice (DOJ). However, most States

have established a central contact, usually in the office of the Governor or Attorney General, and questions about the ADA should be referred to that contact first. In addition, DOJ has established a technical assistance Information Line for public inquiries. The Information Line is available 24 hours daily at (202) 514–0301 (voice) or (202) 514–0381 (TDD). (This number will be replaced with a toll free 800 number in the future.) Lastly, written inquiries about the ADA may be directed to: U.S. Department of Justice, Civil Rights Division, Public Access Section, P.O. Box 66738, Washington, DC 20035–6738.

Of particular consequence in the context of paying for child care is title III of the ADA which prohibits discrimination on the basis of disability by private entities in places of public accommodation. The ADA defined public accommodations as facilities whose operations affect commerce and fall within twelve specified categories, including social service center establishments. The implementing regulations for the ADA, issued on July 26, 1991, specifically include "day care centers" as public accommodations and clarified that places of public accommodation located in a private residence are covered by the ADA.

The ADA uses the term "day care center" as a generic term for all categories of out-of-home child care providers. In contrast to many other Federal non-discrimination laws, a public accommodation does not have to receive Federal funding to be covered by the requirements of the ADA. Thus, with a few very limited exceptions specified in the ADA, all child care providers who provide services to the public are covered by the ADA. While most provisions of the ADA have been well understood, there has been considerable confusion about its impact on payments for child care, particularly when such payment is subsidized. In light of the ADA, we believe it is important to discuss the payments for child care for children with special needs under ACF-administered child care programs. We are therefore proposing clarifications to the regulations which address payments for child care for children with special needs.

The ADA regulation at 28 CFR 36.301(c) states: "A public accommodation may not impose a surcharge on a particular individual with a disability * * * to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modification in policies, practices or procedures, that are required to provide that individual * * * with the non-discriminatory treatment required by the Act * * *."

In response to "whether day care centers may charge for extra services provided to individuals with disabilities," the preamble noted that § 36.301(c) "is intended only to prohibit charges for measures necessary to achieve compliance with the ADA." (56 FR 35564, July 26, 1991.) Thus, the ADA and its implementing regulations do allow caregivers to charge higher rates for special needs, provided those higher charges are for services beyond those required by the ADA and are not for the purpose of recouping the cost of measures required by the ADA.

States need the flexibility to determine on an individual basis how best to meet the needs of children with special needs. It is our intent that such children receive quality child care in developmentally appropriate settings so that they may reach their maximum potential and grow into responsive and responsible adults. Providers should be compensated, within the ADA regulations, for those developmentally appropriate child care services provided to children with special needs in order to ensure that these children do not go unserved and the quality of care is not affected. (At the same time, such compensation must be consistent with the cost principles applicable to expenditures under the program.)

Payments for Child Care for Children With Special Needs Under CCDBG

The CCDBG program uses the term "special needs" in two different contexts. But as stated earlier for the purpose of payment rate discussion, the term "children with special needs" will be used to refer to children with mental or physical impairments that substantially limit one or more of the major life activities.

Because the ADA stresses the need for making decisions on accommodations on an individual basis, it is inconsistent to require grantees to set a single or overall payment rate for children with special needs. We believe that grantees must have the flexibility to set payment amounts on a case-by-case basis. As a consequence, we propose to revise § 98.16(a)(12)(ii) by removing the requirement that grantees justify a decision not to have different rates based on the additional amount charged for child care services provided to a child with special needs. We also propose revising § 98.43(b)(2) to reflect that additional charges for providing child care for a child with special needs must be for services not required as an accommodation under the ADA.

Payments for Child Care for Children With Special Needs Under Title IV–A

The existing regulations governing payments for title IV–A child care require States to conduct local market surveys to establish rates for such care, including care for children with special needs, where applicable. Further, although the regulations for the CCDBG do not require that grantees conduct such market surveys, many grantees have adopted the title IV–A local market rates established by these surveys. The ADA does not explicitly prevent States and grantees from continuing to conduct and use such surveys as a method of establishing rates for payment of special needs child care. However, given the emphasis of the ADA on accommodating persons with disabilities on an individualized basis, ACF strongly believes that local market surveys, for the purpose of establishing rates for special needs care, are no longer useful or accurate.

Because the ADA stresses that decisions on accommodations for a person's disability must be made on an individual, case-by-case basis, we propose at § 255.4(a)(2) that in lieu of a local market survey to establish rates for special needs care, States must use the following method for determining payments to providers of care to special needs children: when a provider charges a special needs child, on an individual basis, a rate that exceeds the local market rate for a child of the same age and category of care, that charge would be the local market rate for that special needs child. The State would pay that charge, subject to the statewide limit and applicable cost principles, if it is for services which are not required as an accommodation under the ADA.

Other than the statewide limit, our regulations do not provide for or authorize additional limitations on charges for children whose needs go beyond those accommodated under ADA. We had concerns that such limitations could violate the ADA principle of individual accommodation, and we did not want to entangle welfare agencies in decisions about what are appropriate accommodations under ADA. Further, it is our belief that the general cost principles applicable in these programs protect both Federal and State governments against provider charges that are unreasonable. Nevertheless, we are interested in comments in this area.

It should be noted that States may continue to establish higher statewide limits for children with special needs.

As discussed above, we believe that States cannot establish valid local market rates for children with special needs because, under the ADA, any higher charges must be based on the individual child's and provider's circumstances; these would not be known or taken into account by a survey. Accordingly, we also propose to remove the reference to differentiating local market rates for children with special needs from § 255.4(a)(3)(ii).

In-Home Care

The CCDBG and title IV–A child care regulations currently mandate that States and other grantees offer in-home care as an option to parents whose child care is subsidized by these programs. However, the provisions for in-home care in the two sets of regulations lack compatibility and impede seamless program administration. CCDBG grantees are allowed to limit the availability of in-home care to those situations in which the payment is reasonably similar to payments for other categories of care. The title IV–A regulations contain no such provision for limiting the availability of in-home care and, unlike the CCDBG, require that States establish local market rates for this category.

To increase the compatibility between CCDBG and IV–A regulations we are proposing to: (1) Allow States and other grantees the same degree of flexibility under both programs; (2) give both programs greater latitude in setting the terms and conditions under which in-home care will be offered; and (3) allow States to establish the minimum wage as the in-home payment rate for care subsidized under title IV–A without conducting a market survey. We believe that these proposals will give States and other grantees greater control and flexibility over the use of in-home care while protecting parental choice and ensuring that specific family needs can be met.

Because this category of care occurs in the child's own home, it has unique characteristics. First, it is affected by the interaction with other laws and regulations. For example, in-home providers are classified as domestic service workers under the Fair Labor Standards Act (FLSA) (29 U.S.C. 206(a)) and are therefore covered under minimum wage and tax requirements. Second, child care administrators have faced greater challenges in monitoring the quality of care and the appropriateness of payments to in-home providers. These unique characteristics and the experience of States, Territories and Tribes over the past several years indicate a need for greater flexibility as well as consistent policies across funding streams.

The mandatory inclusion of in-home care in current CCDBG and IV–A regulations is intended to ensure a full range of options to meet families' needs and to accurately reflect the child care market. However, because in-home care is not required by statute and because States and other grantees have requested greater flexibility and consistency across policies, we considered proposing that in-home care be made optional in both programs. However, we were concerned that, because in-home care presents a number of administrative challenges, some States would unduly restrict the availability of care for families who particularly need this type of setting or who lack other options. We therefore decided not to make in-home care optional but to give States and other grantees greater flexibility.

We are mindful that in-home care plays a valid and important role in the child care market place and that many participants in subsidized care programs rely on care in their own homes to meet their family needs. Access to care which meets the needs of individual families is critically important to parents and children, to schools and the workplace, and to other community institutions which interface with the family. While in-home care represents only a small proportion of all available care in most communities, it may be the best or only option for some families and may prove valuable, necessary and cost-effective when compared to other options. Despite the challenges cited above, in-home care is being successfully offered and has proven to be an important resource. For these reasons, we expect States and Tribes to consider family and community circumstances carefully in establishing any conditions which will limit the availability of in-home care. We are thus proposing that grantees include in their CCDBG plans a discussion of their policies for in-home care and a rationale for their policy decisions.

There are a number of conditions under which in-home care may be the most practical solution to a family's child care needs. For example, the child's own home may be the only practical setting in rural areas or in areas where transportation is particularly difficult. Employees who work nights, swing shifts, rotating shifts, weekends or other non-standard hours may experience considerable difficulty in locating and maintaining satisfactory center-based or family day care arrangements. Part-time employees often find it more difficult to make child care arrangements than do those who work full-time. Similarly, families with more than one child or children of very different ages might be faced with multiple child care arrangements if in-home care were unavailable. Many families also believe that very young children are often best served in their own homes. Given the general paucity of school-age child care in many communities, in-home supervision may enable some families to avoid latchkey situations before school, after school, and when school is not in session. For many families, in-home care by relatives also represents an important cultural value and may promote stability, cohesion and self-sufficiency in nuclear and extended families.

We also urge child care administrators to consider the capacity of local child care markets to meet existing demand and the role that in-home care may play in the ability of parents to manage work and family life. Although in-home care does not represent a large share of the national supply, it plays an important role in the structure and functioning of local child care markets by extending the ability of parents to care for children within their own families, closing gaps in the supply of community facilities, and creating a bridge between adult care and self- or sibling-care as children near adolescence.

Some States may choose to limit in-home care because of cost factors governed by minimum wage provisions of the FLSA and other Federal and State requirements. For example, a State might determine that minimum wage requirements result in payments for in-home care serving only one or two children that are much higher than the local market rate for other categories. Therefore, the State could elect to limit in-home care to families in which three or more children require care. The payment to the in-home provider would then be similar to the payment for care of the three children in other settings. This ability to limit in-home care allows States to recognize the same cost restraints that families whose care is unsubsidized must face.

ACF recognizes that giving the States greater latitude to impose conditions and restrictions on in-home care may affect parents' ability to make satisfactory arrangements and thus their ability to participate in work, education or training. We also recognize the challenges of implementing health and safety requirements in the child's own home, of monitoring in-home providers, and of complying with federal wage and tax laws governing domestic workers. Therefore, we are seeking focused comments on our regulatory proposals for in-home care and would especially

appreciate suggestions on how to balance parental choice, cost effectiveness, and adherence to other Federal and State provisions, such as the FLSA, that are unique to in-home settings.

In-Home Care and the CCDBG

We propose to revise § 98.16(a)(7)(ii) to require that grantees include in their CCDBG plans a specification of their policies for in-home care and the rationale for those policies.

In-Home Care and Title IV–A Child Care

We propose to amend §§ 255.3(c) and 257.40(b) to give States the flexibility to specify the conditions and limitations under which the State will make in-home care available. Therefore, we propose to add State plan requirements at §§ 255.1(n) and 257.21(o) to ascertain any conditions and limitations the State has placed on in-home care.

Establishing the Local Market Rate for In-Home Providers

ACF proposes to amend § 255.4(a)(3)(i) and (v) to give States the flexibility to eliminate the local market survey, required by § 255.4(a)(2), as the basis for establishing local market rates for in-home care providers. The proposed amendment provides that the local market rate for in-home providers must be at a level no lower than the level required by Federal and State provisions which govern domestic service workers. The State may choose to establish the local market rate at such a level without conducting the survey specified under § 255.4(a)(2). As an alternative, the State has the option to conduct a local market rate survey for in-home care if the State believes that the local market rate for such care is higher than that required by the FLSA and other Federal and State statutes.

The Effects Test and CCDBG

Section 658E(c)(2)(A) of the Block Grant Act requires States to provide assurances that parents are given the option of (1) enrolling their children with a provider who has a grant or contract to provide services, or (2) receiving a child care certificate with which to pay the provider of their choice. The Act also requires that children who are to be enrolled in contracted slots must be placed with the provider of their parents' choice whenever possible. For the CCDBG program, Congress clearly expected that parents would be able to choose from a wide variety of child care arrangements, including care in private homes by relatives or family providers; in churches, synagogues or temples; in community centers and schools; and in employer-provided facilities.

In addition to the expectation that parents would be offered child care options, Congress clearly intended that CCDBG grantees ensure the safety of children in care. Therefore, grantees are also required by statute to promulgate health and safety regulations which adequately protect children.

We believe that Congress intended grantees to balance these provisions. In issuing the CCDBG regulations, ACF attempted to regulate how grantees would implement this balance. In order to protect children, grantees were mandated to ensure that health and safety requirements were in effect for all providers receiving funds under the CCDBG. Simultaneously, ACF promulgated additional provisions, known as the "effects test," which withheld CCDBG funds if the grantees adopted requirements or procedures which had the effect of significantly limiting parental access to a category of care or type of provider.

Many grantees and advocates in the field of child care have pointed out the potential tension between these regulatory provisions. In addition, many questions have been raised regarding the practical implementation of the effects test and the criteria by which to judge that health and safety standards have actually limited parental choice. Most compelling among such arguments has been the noted absence of statutory references to the effects test.

We are now proposing to eliminate the effects test. We do not intend and do not believe this proposal will weaken parental choice. In subpart D of the CCDBG regulations, §§ 98.30–98.34 delineate parental rights and responsibilities. We are not proposing to change anything in these sections that would in any way minimize the importance of parental choice. Parental choice remains a requirement for CCDBG at § 98.30.

Based on two years of experience in the implementation of these programs, we do not believe that the effects test is necessary to protect parental choice. We have substantial evidence that grantees are indeed offering parents a choice of eligible providers through the design and operation of their certificate programs. In addition to information gathered from administrative staff during 33 on-site program reviews, we heard from parents and providers in focus group settings. Parents as well as providers spoke favorably about the choices that parents exercise in making arrangements for their children. The findings of these program reviews, along with our ongoing review of child care plans, reveal that grantees are operating certificate programs which fulfill the statutory parental choice directives. However, based on the experience of grantees attempting to balance these provisions, we are seeking focused comments on the potential impact of this proposal.

We propose that the CCDBG rule be amended by removing § 98.30(g) which sets forth the effects test and by removing related references at §§ 98.40(b)(2) (State and local regulatory requirements), 98.41(b) (health and safety requirements), 98.43(c) (payment rates), and 98.45(d) (registration).

The Effects Test and Title IV–A

There is no specific statutory commitment to the principle of parental choice of providers in the title IV–A child care programs as there is for the CCDBG program. Parental choice, however, is addressed in the current title IV–A regulations. If more than one category of care is available, the regulations require the State to provide the parent or caretaker relative with an opportunity to choose the arrangement. Also, the State IV–A agency is required to establish at least one method by which self-arranged care may be paid.

To be compatible with the current CCDBG regulations, the existing title IV–A child care regulations include an effects test concerning the regulatory provisions that allow States to adopt the health and safety requirements of other Federal or State child care programs. Additionally, they contain an effects test concerning the At-Risk provider registration provisions which States must adopt. The title IV–A child care effects test is the same as the effects test contained in the CCDBG regulations, i.e., that a State's requirements and procedures in those areas may not have the effect of excluding any categories of child care providers. For the same reasons given for removing the CCDBG effects test provisions, however, ACF proposes to remove the title IV–A effects tests requirements at §§ 255.4(c)(2)(iii), 257.41(a)(3), and 257.41(b)(2)(v). We do not propose to, and do not believe this action will, delete or weaken the current title IV–A parental choice provisions.

Part 98—Child Care and Development Block Grant

Immunizations

We are proposing to amend the CCDBG health and safety regulations to require that grantees establish rules requiring children receiving CCDBG services to be immunized. While this change affects only the CCDBG

regulations, grantees may apply the immunization requirement to title IV–A child care programs for a more seamless child care system.

The CCDBG statute currently includes references to immunizations. Section 658E(c)(2)(F) requires grantees to provide assurances that provider requirements are in effect to protect the health and safety of children receiving services under §§ 98.50 and 98.51, including "the prevention and control of infectious diseases (including immunizations)."

Section 658E(c)(2)(G) of the Block Grant Act also requires grantees to assure that procedures are in effect which ensure that child care providers comply with all applicable health and safety requirements described in paragraph (F) of section 658E. However, section 658P(5)(B) allows grantees to exclude grandparents, aunts or uncles from provider health and safety requirements. The current CCDBG regulations reiterate these statutory requirements.

Surveys of licensed child care facilities indicate that the majority of States require some proof of immunizations for children enrolled in licensed or regulated child care centers and family day care homes. However, individual States differ in their specific requirements and regulatory approaches. In addition, requirements for the immunization of children in legally unlicensed care vary widely. Consequently, there is concern that current immunization policies and practices may be inadequate to protect large numbers of young children.

Preventable diseases that were practically eliminated years ago are again infecting our youngest and most vulnerable children. More than 55,000 measles cases were reported to the Centers for Disease Control and Prevention (CDC) between 1989 and 1991. In 1990, 64 deaths from measles were reported, the highest number in two decades. A survey conducted by the CDC in 1991 found that only 37–56% of two-year-old children were fully vaccinated. ("Childhood Immunizations Fact Sheet," Department of Health and Human Services, Washington, DC, February 12, 1993.) Since a large percentage of children receiving assistance under the Block Grant program are under 5 years of age, we believe that the proposed requirements will assist in reducing the incidence of infectious diseases among preschool age children.

For these reasons, we propose amending § 98.41(a)(1) to require that grantees' health and safety plans include specific provisions requiring children to be immunized in order to receive services under the CCDBG. State and Territorial health and safety plans must incorporate (by reference or otherwise) the latest recommendations for childhood immunizations of the respective State or Territorial Department of Public Health. Since there may not be a similar public health authority for Tribes to follow regarding immunization standards, we are proposing to allow Tribes the option to determine the immunization standards to be followed for children to receive CCDBG services. Tribes may choose standards set forth by the State Public Health Department or the Indian Health Service. Tribes will be required to identify the source of these standards in their CCDBG plans. In addition, we propose that all grantees consider requirements which include provisions for documenting regular updates of the child's immunizations.

Grantees have flexibility in the method of implementing this requirement. For example, grantees may require parents to provide proof of immunization as part of the initial eligibility determination and again at redetermination, or grantees may require child care providers to maintain proof of immunization for children enrolled in their care. However, the requirements established by the grantee must apply to all children receiving CCDBG assistance and in all child care settings, unless the child is in one of the exempt groups cited below.

While we propose to require children to be immunized in order to receive services, grantees may continue to exempt:

(1) Children who are cared for by relatives (defined as grandparents, aunts and uncles);

(2) Children who receive care in their own homes;

(3) Children whose parents object for religious reasons; and

(4) Children whose medical condition contraindicates immunization.

In proposing that children be immunized, we considered that parents may not always have had access to immunizations. However, we believe that the increasing national focus on immunization will ease this difficulty. The President has made vaccine delivery a national priority and has signed into law the Vaccine for Children program which provides free vaccines to States for the inoculation of uninsured children, children eligible for Medicaid, and Native American children. Underinsured children whose health insurance does not cover immunizations are also eligible to be served by Federally Qualified Health Centers and Rural Health Clinics. The new program will also allow federally purchased vaccine to be distributed to private physicians to vaccinate eligible children.

Where grantees impose burdens on providers to check on the immunization status of children in their care and to ensure that necessary immunizations are received, we would expect grantees to assist providers in meeting these requirements. At a minimum, the assistance should include: (1) Provision of updated immunization schedules; (2) information on the availability of free vaccines; and (3) information on locations where parents of eligible children can be referred for immunizations. These expectations are consistent with section 658E(c)(2)(G) of the CCDBG statute which requires that procedures be in place to ensure that providers comply with applicable health and safety requirements.

We also expect that some children may not have all of the required immunizations at the time eligibility is determined. In order to ensure that children eligible to receive services under the Block Grant are not denied services, we recommend that grantees establish a grace period in which children can receive services while taking the necessary actions to comply with the requirements. Grantees will be required to describe the grace period allowed to these families in their CCDBG plan.

The health of all children is important, and we therefore strongly encourage immunizations for children receiving title IV–A child care. However, we believe that there is no authority under the Social Security Act to require immunizations for children receiving title IV–A child care and therefore we cannot propose a parallel regulation for title IV–A child care. Unlike the CCDBG statutory mandate for State requirements for the prevention and control of infectious diseases, including immunization, for all providers, the Social Security Act is silent. Nevertheless, we wish to emphasize that States already have the necessary flexibility to choose to require immunizations for children receiving title IV–A care under the existing title IV–A applicable standards regulations. The application to title IV–A child care of the proposed immunization requirement would facilitate the seamless delivery of child care services across programs.

The applicable standards regulations at §§ 255.4 and 257.41 require title IV–A child care providers to meet any generally applicable standard of State, local or Tribal law. Additionally, the

applicable standards regulations allow States to deny payment for care that does not meet the additional standards used in other Federal (e.g., CCDBG) or State child care programs in the area of prevention and control of infectious diseases, including immunizations. Thus additional Federal regulations are not necessary for title IV–A child care for States to have the ability to require consistent health and safety standards, including the proposed immunization requirement.

Foster Care

We are clarifying that CCDBG grantees have the flexibility to include foster care in their definition of protective services. The preamble to the existing regulations distinguishes between protective services cases and children placed in foster care by allowing child care subsidies for foster care cases only if the foster parent is working, in education or in training. The distinction made in the preamble was an interpretation of the regulatory language. The regulation discusses child protective services only; it is silent on foster care. This change in interpretation does not require a regulatory change.

In many States, foster care is an integral part of the protective services system. It is one of the many services provided to children and families who, for a variety of reasons, may need protective intervention. A child is placed in foster care when remaining in the home places him or her at risk. States, acting in loco parentis, may provide on-going supportive services to meet the developmental needs and redress developmental delays which may exist as a result of neglect or abuse. These services are available both for a child who remains in his or her own home and for a child in a foster placement. For purposes of protective services benefits, some grantees do not differentiate between the protective services for families who remain intact and for those children who are in a foster placement.

In the preamble to the existing regulations, a child in a family that is receiving, or needs to receive, some type of protective, interventive services can be eligible for child care subsidies under CCDBG if he or she remains in his or her own home even if the parent is not working, in education or in training. However, such therapeutic child care outside of the home may be a necessary part of the individual child's supportive services plan regardless of the child's living situation. In these cases, child care is needed to carry out the social services plan for the child and the family—not necessarily because the parent is working, in education or in training. Therefore we are changing our interpretation of the regulation to allow States the option of including children in foster care in the State's definition of protective services cases.

Allowing CCDBG grantees to include foster care in their definition of protective services not only gives grantees the flexibility to work within existing child protective services systems, it is also consistent with the goals of the recently enacted Family Support and Preservation Act. This Act promotes integrated and comprehensive services for families already receiving supportive and/or interventive assistance from social services agencies.

Grantees electing to include foster care in their definition of protective services will be required to state this in their Block Grant Plan. Those grantees choosing to exclude foster care from their definition of protective services must define eligibility for participation in CCDBG child care subsidies in terms of the foster parent working, in education or in training.

Certificate Availability

Section 658E(c)(2)(A) of the CCDBG Act requires States to provide assurances that parents are given the option of (1) Enrolling their children with a provider who has a grant or contract to provide services, or (2) receiving a child care certificate with which to pay the provider of their choice. The Act also requires that children who are to be enrolled in contracted slots must be placed with the provider of their parents' choice whenever possible.

The CCDBG regulation elaborates on the choice between grant/contract child care and a child care certificate by requiring that a certificate must be offered when child care services under § 98.50 are made available to a parent. We do not propose any changes to this requirement which is stated both at § 98.30(a) and § 98.30(e). However, we do propose removing § 98.30(e) because it is redundant to a clearer and more expanded presentation of parental choice set forth in § 98.30(a) (1) and (2).

We are also using the opportunity provided by this proposed rule to clarify the certificate requirement and to offer examples of grantee systems which have successfully met this requirement.

Our restatement of the regulatory position that certificates must be available whenever services under § 98.50 are offered does not preclude grantees from entering into grants or contracts for child care services. Depending upon the child care needs of the eligible population in discrete geographic areas of service, grants and contracts may be necessary to provide stable child care for participating populations or specific communities. In essence, the provision requires a good faith effort by the grantee to balance the allocation of funds between grants/contracts and certificates to ensure that parents have optimum choice among quality child care options as stipulated in the legislation and reinforced in the existing regulation.

In conducting on-site program reviews over the past two years, we have found that grantees are operating certificate programs which offer parental choice. Some grantees are offering only certificates. Others are committing funds on a proportional basis between certificates and contracts based on the particular needs of individual areas or populations. Some grantees, however, have experienced that stable child care is more difficult to find in rural or inner-city areas, for infants, or for children with special needs and have therefore contracted with competent providers to specifically address these shortages.

In planning the distribution of funds for grants/contracts and certificates, grantees should establish sufficient fiscal flexibility to ensure that parents who choose certificates are not placed on a waiting list while substantial numbers of contracted slots in the same area remain un-utilized.

However, most grantees are reporting that the need for subsidized low-income child care far exceeds the available funding. Thus, if certificate funds are fully reserved for children who are already enrolled, and no subsidized slots are available (either filled or not part of the grantee's program), it may be necessary to begin a waiting list for certificates. Similarly, because many grantees are allocating funds on a locality by locality basis, waiting lists may result in some parts of the State while services are still available in other areas.

We want to clarify that although certificates must be an option for parents whenever § 98.50 services are offered, it is not necessary to offer certificates whenever § 98.50 services are being used. For example, if all CCDBG funds available in a community are "reserved" for specific children in contracted and certificate-funded slots, the grantee is not actually offering services and need not offer additional certificates. Thus, a local program might not offer new child care services during some portion of the program year because all available funds have been assigned to specific children and are

being used or "reserved" for those specific children.

Other Authorized Activities

Currently, CCDBG grantees may spend up to 10 percent of CCDBG funds authorized under § 98.50 (the 75 percent monies) for program administration and activities to improve the availability and quality of child care services. If expenditures for operating the certificate program and related consumer education equal or exceed 10 percent, grantees may petition for an additional five percent for other authorized activities, for a total of 15 percent.

Based on information provided by grantees in their annual reports and during on-site program reviews, we now propose to allow grantees to use up to 15 percent of funds authorized under § 98.50 for ongoing activities related to program administration, quality and availability without further justification.

In proposing this change, we acknowledge the cost implications of complex interrelationships among program administration, quality services and availability of child care options in the context of rapidly increasing family and community needs. Many States and localities want to develop more cohesive, integrated and sophisticated child care management, delivery and payment systems. Activities undertaken under § 98.50(d) can contribute to the development of child care systems which more effectively support informed consumer choice and the delivery of quality care through community-based providers. This change will provide grantees with the flexibility to balance priorities and develop more responsive child care programs.

Accordingly, we propose that the CCDBG rules be amended to specify that the amount generally allowed for activities related to administration, quality and availability is 15 percent at § 98.50(d)(2)(ii). Therefore, the amount specified for direct services is at least 85 percent at § 98.50(d)(2)(i). The change will also remove § 98.50(d)(3) which requires grantees to petition for the additional five percent and remove a reference to § 98.50(d)(3) which occurs in § 98.52(c). It will also remove a related reference at § 98.13(a)(6)(ii).

Availability of Funds

In the Juvenile Justice and Delinquency Prevention Amendments of 1992, section 658J(c) of the CCDBG Act was amended to eliminate the time restrictions on obligation and to extend the length of time grantees have to expend funds received each fiscal year.

Block Grant funds awarded to States and Territories had previously been available for obligation by the grantee in the fiscal year in which the grant funds were awarded and in the succeeding fiscal year (year 2). Unliquidated obligations at the end of year 2 were to be liquidated during the next fiscal year (year 3).

The statutory amendments eliminate the restrictions on obligation of funds by States and Territories by providing that CCDBG funds are expendable in the fiscal year in which they are awarded and in the three (3) succeeding fiscal years. For Tribal grantees, the amendments also extend the expenditure period from three (3) fiscal years to four (4) fiscal years. Thus, the expenditure period for all grantees (States, Territories, exempt Tribes and non-exempt Tribes) now extends to four (4) fiscal years.

The amendments were not effective in time to remove the September 30, 1992, obligation restriction on FY 1991 grant funds awarded to States and Territories. However, the amendments do provide an additional year to expend funds for obligations made with FY 1991 funds, so that States and Territories now have until September 30, 1994 (rather than September 30, 1993), to expend FY 1991 funds which were obligated by September 30, 1992.

Tribal grantees who received FY 1991 funds were required to expend their funds by September 30, 1993. Because the amendments provide an additional year during which FY 1991 funds may be expended, Tribal grantees have until September 30, 1994, to expend their FY 1991 grants.

In summary, for all grantees (States, Territories and Tribes), FY 1992 and subsequent fiscal years' funds must be expended by the end of the expenditure period (the fiscal year in which the funds are awarded plus the three succeeding fiscal years). To reflect these changes, we propose amending § 98.2 by removing and reserving paragraph (z) and revising paragraphs (y) and (cc) and § 98.60 by revising paragraphs (d)(1), (d)(4), (h)(1), and (h)(3) and removing paragraphs (d)(2), (d)(3), (e), and (h)(2).

Financial Reporting

We propose revising § 98.63(a)(1) and (b) to change the dates by which States must report funds for reallotment to other State grantees. Reallotment rules do not affect Territories or Tribal grantees since those grantees may not receive reallotted funds.

Each fiscal year, States must specify the amount of any CCDBG funds which will be available for reallocation or else report that all funds will be expended. The deadline for submission of this information was previously April 1 of the second fiscal year of the obligation period. As a result of the extension of the expenditure deadline by section 8 of the Juvenile Justice and Delinquency Prevention Amendments of 1992, the date by which States must report CCDBG funds for reallotment has been extended to April 1 of the fourth (and last) fiscal year of the expenditure period.

Since the amendments did not remove the September 30, 1992 obligation deadline for FY 1991 grant funds, this change in reporting did not affect FY 1991 awards. For FY 1992 funds, States must report on the availability of funds for reallotment by April 1, 1995. Funds reallotted from one fiscal year's grant are subject to the same period of availability as the grant year from which the funds were awarded. Thus, FY 1992 funds, if any, reallotted in May of 1995 must be expended by September 30, 1995.

Annual Report Requirement

In § 98.70, the CCDBG rule requires grantees to submit annual reports to the Secretary by December 31. This provision is not affected by the extension of the expenditure period by section 8 of the Juvenile Justice and Delinquency Prevention Amendments of 1992. Each report must specify expenditures made by September 30 of the year in which the report is submitted to the Secretary, with each fiscal year's funds accounted for separately. However, we are proposing to revise § 98.70 to more clearly state the requirement and to delete those requirements no longer applicable.

PART 255—CHILD CARE AND OTHER WORK RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION AND TRAINING

Child Care That Is "Reasonably Related" To Parent's Activities

Under the regulations for title IV–A child care, a State must assure in the State Supportive Services Plan that child care provided or claimed for reimbursement is reasonably related to the hours of participation in JOBS or in other State-approved education and training (for care under part 255) or employment (for care under parts 255, 256 and 257). ACF recognized that many individuals would participate in education, training and employment on less than a full-time basis, but decided not to regulate a definition of what constitutes child care that is reasonably related to the parent's hours of

participation or employment. Rather, we gave States the flexibility and, we believed, the authority to develop their own policies.

During our discussions with States, however, we learned that there is some misunderstanding or disagreement about who has the responsibility for establishing policies on what constitutes an amount of child care that is reasonably related to the parent's training or employment. For example, internal or external reviews or audits have questioned how a State determined that the child care under review was reasonably related to the parent's activity.

ACF continues to maintain that State IV–A agencies should establish their own policies for what constitutes a "reasonably related" amount of child care. Therefore, we propose to have the State include in its Supportive Services Plan a description of its policy on what constitutes child care that is reasonably related to the parent's hours of participation in education, training or employment by revising §§ 255.1(e)(4) and 257.21(a)(6).

Including the State's "reasonably related" child care policy in the federally approved Supportive Services Plan will clarify the IV–A agency's role in developing and articulating the State's policy in this area. By having written policy on "reasonably related," States should avoid such disputes with potential reviewers.

In proposing this regulation, we wish to clarify the difference between a policy which addresses paying for child care when a child is absent from regularly scheduled care (e.g. due to illness) and a policy which describes what is reasonably related child care.

A "reasonably related" child care policy correlates the parent's activities with the amount of child care that the IV–A agency views as necessary based on the parent's activities and in consideration of other factors that the agency regards as significant. For example, States may wish to include such factors as the individual needs of the recipient family, the availability or lack of care alternatives in a local market area, need for continuity of care by a specific caregiver, or the needs of a Head Start Agency to meet operating expenses for wrap-around child care.

In contrast to the "reasonably related" policy which relates the parent's activity to an amount of child care, an absence policy addresses the fact that children will occasionally miss child care especially due to illness. A State's absence policy would establish when a State would pay for child care even when the child is absent. FFP is available for payments made in accordance with a State's absence policy.

The "reasonably related" policy the State describes in its approved Supportive Services Plan will become the standard against which actual payments will be judged, for example, for audit purposes. We therefore advise the State to articulate its policy clearly to all individuals responsible for approving the payment or reimbursement of child care services.

Determination of Physical or Mental Incapacity

Under the regulations for AFDC child care at part 255 and Transitional Child Care (TCC) at part 256, the determination of mental or physical incapacity for a child over age 13 can only be made by a "physician or a licensed or certified psychologist."

The existing policy was adopted to be consistent with the regulations concerning exemption from participation in the Job Opportunities and Basic Skills Training (JOBS) program found in part 250. Exemptions from participation in JOBS are available for a number of reasons, including physical or mental incapacity. Since incapacity would provide a long and perhaps permanent period of exemption from activities that would prepare an individual for entry into the work force, a high standard of professional verification by a physician or licensed or certified psychologist was adopted. After experience with the child care programs, we do not believe that receiving child care services under parts 255 and 256 requires such rigorous verification.

In addition, when the CCDBG program and the At-Risk Child Care program were implemented after JOBS, both programs, by regulation, provided for care of a child over age 13 who is physically or mentally incapable of caring for himself or herself. The regulations for those programs at parts 98 and 257, respectively, permit the State to make the determination of physical or mental incapacity. Those regulations also require States to include a definition of the term "physically or mentally incapable of caring for himself or herself" in the applicable State Plan.

We propose to amend the child care regulations at parts 255 and 256 to be compatible with the regulations of the other child care programs. These proposed changes will ease State administration of child care programs while continuing to ensure that eligibility is properly documented. We therefore propose to amend §§ 255.2(a) and 256.2(a) to provide State flexibility in determining physical or mental incapacity. We also propose to add §§ 255.1(m) and 256.1(a)(5) to require the State to provide its definitions of physical or mental incapacity in the applicable State Plan.

Gaps in Employment and Child Care Under Title IV–A

We propose to modify the regulatory language at § 255.2(d)(2) to allow States the additional option to continue child care for families that lose a job but are searching for another job. Under the proposed regulation at § 255.2(d)(2)(ii) care can be continued for up to one month of job search if the care arrangements would otherwise be lost. This is an expansion of the existing regulation which provides for a continuation of care for up to one month only if an activity is scheduled to begin within that month and the arrangements would otherwise be lost.

We believe that giving States this additional option to continue child care for a limited period of job search is supportive of families who may have to change employment and recognizes that it is not always possible to secure another job immediately following a job loss. Under the existing regulations, States have had the option to extend child care services that would otherwise be lost for a limited period both when another activity is already scheduled to begin within that period and when there is a short period of absence from an on-going job. The proposed regulation broadens the State's ability to serve families for whom continuity of care would assist their movement towards self-sufficiency.

We also propose to amend the At-Risk regulations at § 257.30(c) to be consistent with the proposed change at § 255.2(d)(2)(ii) to allow States the option to continue child care for up to one month for families that lose a job but are searching for another job. Additionally, we propose to amend § 257.30(c) to delete the requirement that child care for the two-week period prior to the start of a job may be provided only if "the child care arrangements would otherwise be lost." We believe that the two-week period may be needed to provide child care in order to prepare for employment. We propose that at State option child care may be available for up to two weeks before employment without restriction.

In making these changes to the regulations at §§ 255.2(d) and 257.30(c), we recognized that the existing regulations for care under part 256 (TCC) are silent on the provision of child care during gaps between jobs. In

JOBS–FSA–AT–90–8, dated June 29, 1990, we clarified that families are eligible for TCC during gaps in employment. This proposed rule at § 256.2(f) thus codifies existing policy and mirrors the amended policy concerning gaps in employment in parts 255 and 257. Care provided during a break in employment, that is, when the family is not working, does not extend the family's 12-month eligibility period.

We propose to make a corresponding amendment to the regulations at § 256.1(a) for the State Supportive Services Plan which addresses Transitional Child Care. We propose that the plan reflect whether the State has elected to allow child care during gaps in employment under TCC pursuant to the proposed § 256.2(f).

PART 256—TRANSITIONAL CHILD CARE

Determination of Physical or Mental Incapacity

We propose to amend the regulations of the TCC program at § 256.2(a) to allow the State to determine "physical or mental incapacity" and at § 256.1(a) to allow the State to define the term in the State's Supportive Services Plan. Our reasons are further explained in the preamble to the proposed changes for part 255.

Voluntary Cessation of AFDC and Eligibility for TCC

We propose to amend § 256.2(b)(1) by adding a new subparagraph (ii) to allow States the option of making families who voluntarily terminate receipt of an AFDC benefit eligible for TCC. Under this option, working families that receive AFDC could request that their AFDC be terminated and still become eligible for TCC, provided that they meet all other TCC eligibility requirements.

The existing regulation, which we propose to redesignate as § 256.2(b)(1)(i), requires that a family's eligibility for TCC is based on a loss of eligibility for AFDC due to the increased hours of employment, increased income from employment or loss of the income disregards due to time limits. In our consultations we have heard concerns that some working families find themselves ineligible for TCC because they voluntarily leave AFDC when they are still entitled to a grant. Therefore, we propose to allow the State the option to provide TCC to those working families who voluntarily request that their AFDC be terminated because their hours or income from employment have increased or they have lost the income disregards due to time limits, but are still eligible for AFDC. This policy, coupled with our proposal to give States the option to eliminate the need for a request for TCC, should allow States to provide TCC to more families, while easing the administrative burden on them to provide that service.

We are not proposing to require States to provide TCC in voluntary closure cases because we are unsure of the administrative and fiscal impacts on States. At the same time, we want our regulations to support families who take the initiative to get jobs and move off AFDC. Therefore, we are interested in receiving comments as to whether it would be more appropriate to allow or to require States to provide TCC in voluntary closure cases.

We propose to revise the regulations concerning the State Supportive Services Plan at § 256.1(a)(6) to include information on whether the State elects to provide TCC to working families who voluntarily cease to receive AFDC.

Requesting TCC

The existing regulations require States to provide information to families about their potential eligibility for TCC, the steps they need to take to request TCC services, and their rights and responsibilities under the program. States must provide this information during initial application for AFDC, during orientation to the JOBS program, at redetermination of eligibility for AFDC benefits and at termination of AFDC benefits. ACF issued an Action Transmittal (CC–ACF–AT–92–3), dated June 16, 1992, that reiterated the necessity for all families to be informed about TCC "in writing, and orally as appropriate, at the time they become ineligible for AFDC."

The existing regulations also require that all families request TCC before services are provided. ACF did not regulate the nature of the request or application process. Rather we encouraged States to make the process simple, citing the example of a current recipient for whom the State might approve TCC through a recertification process if the necessary information was on file.

We have, however, heard concerns that the requirement for the family to request services may have discouraged some families from seeking TCC or caused disruption in child care arrangements. This requirement is especially frustrating for families when necessary information is already on file with the State agency.

Therefore, we propose at § 256.2(b)(3) to give States the option to provide TCC, without requiring a request, to eligible families. We believe that such a policy would be most applicable to families who were approved for child care services under part 255. For example, an AFDC recipient reports her newly-begun job to her AFDC case manager. At that time, the case manager determines that the family will remain eligible for AFDC until the time limitations on the income disregard at § 233.20(a)(11) cause the family to lose AFDC eligibility. Because the case manager recognizes that the family will be eligible for TCC in four months, if circumstances remain the same, she obtains the necessary information with which to determine eligibility and establish the level of the family's fee for TCC, if any. Continuing child care services in this instance would be possible because all the appropriate information is available to determine TCC eligibility, including fees, when the family loses eligibility for AFDC and transitions to TCC. Adopting this option can make the delivery of title IV–A child care services more seamless for the family. Additionally, the transition from child care services provided under part 255 to TCC services may well be "transparent" to the family if the State also adopts the proposed option to waive TCC fees for those families who are at or below the poverty level.

However, in adopting the option to continue child care services without a request for TCC, the State must still provide all of the required notifications, including appeals rights, regarding the termination of AFDC benefits and child care services pursuant to §§ 205.10 or 250.36 as appropriate. The family must also be notified of the requirements for their continued eligibility for TCC, including the payment of fees if applicable, pursuant to the requirements at §§ 256.2, 256.3 and 256.4.

We propose amending § 256.1(a)(6)(i) to have States specify in their Supportive Services Plan whether they have adopted this option.

In proposing this option we recognize that, in some cases (e.g., where a State does not have current or complete information on a family), a State may find it difficult to provide TCC in the absence of a request. Therefore, the State will still need a mechanism in place to collect the information necessary to determine eligibility and payments. For many families, the need for child care will not arise until they get a job which terminates their AFDC eligibility. Other families who leave AFDC due to employment may not need child care at that time (e.g., because their child is enrolled in Head Start), but may need care subsequently. Whenever the need for child care arises, the State must make a prompt

determination of eligibility for TCC in order to assist the family. ACF remains concerned that States have not established such timely, efficient procedures. The request or application process should be simple so as not to hinder the applicant's ability to accept work or continue working.

Because we continue to hear concerns that the requirement for a request for TCC is problematic and that TCC utilization is low, we are requesting comments on whether: (1) This provision to make requests optional is a sufficient response; (2) the request requirement constitutes a serious barrier to the receipt of TCC; and (3) other changes should be made to make TCC more accessible to eligible families.

Retroactive Requests for TCC

The existing rule at § 256.2(c) specifically provides for families to receive TCC "notwithstanding when the family requests assistance under this Part * * *." States have asked whether they may establish a cut-off date for TCC requests as they have received requests after the family's 12-month period of TCC eligibility has expired. There is no existing Federal policy which addresses a cut-off date for TCC requests following the 12-month eligibility period. We believe a cut-off date should be a State decision. We propose to revise § 256.2(c) and add a new paragraph § 256.2(g) to provide States the authority to establish a reasonable time limit for accepting TCC requests following the close of the eligibility period.

We also propose to amend § 256.4(c) to require States which have elected to establish a time limit for accepting requests for TCC, pursuant to § 256.2(g), to notify families of the time limit.

Fee Requirement

In order to be compatible with the At-Risk Child Care Program at § 257.31(c) and CCDBG at § 98.42(c), we propose to amend the TCC regulation that requires some level of contribution to the cost of TCC by all recipients. Section 402(g)(1)(A)(vii) of the Act requires a family to contribute to the cost of TCC according to its ability to pay. The existing regulations at § 256.3(b) require that a sliding fee be established that provides for some level of contribution by all recipients.

As is the case with At-Risk families, families eligible for TCC are only one step away from actual receipt of AFDC. We believe it is appropriate to give States the option to treat TCC families the same as other similarly-situated families in the State. Therefore, we propose to revise § 256.3(b) to give States the option to waive the contribution from a family whose income is at or below the poverty level for a family of the same size.

Gaps in Employment During TCC

As discussed in the preamble to part 255 we propose to amend § 256.1(a) and add § 256.2(f) to allow States the option to continue child care that would otherwise be lost, for a limited period of time for families waiting to enter employment or who have a gap in employment. Section 256.2(f) codifies into part 256 the existing and proposed title IV–A child care gaps policy.

PART 257—AT-RISK CHILD CARE PROGRAM

Child Care That Is "Reasonably Related" to Parent's Employment

As discussed in the preamble at parts 255 and 256, we propose to amend § 257.21(a)(6) to have the State include in its At-Risk Child Care plan a description of its policy on what constitutes child care that is reasonably related to the parent's hours of employment.

Gaps in Employment During At-Risk Child Care

As discussed in the preamble at parts 255 and 256, we propose to amend § 257.30(c) to allow States the additional option to continue child care for a limited period of time for families that lose a job but are searching for another and whose child care arrangements would otherwise be lost. We also propose to conform the At-Risk regulations regarding the provision of child care during the two weeks prior to start of employment with the corresponding regulations in part 255 and the proposed amendment to part 256. With these proposed amendments, States will have the flexibility to create a consistent gaps policy across the three title IV–A child care programs.

Other Proposed At-Risk Child Care Amendments

We propose amending the At-Risk regulations concerning in-home care and the effects test, as discussed earlier in the preamble.

List of Subjects

45 CFR Part 98

Child care, Grant program—social programs, Parental choice, Reporting and recordkeeping requirements.

45 CFR Part 255

Aid to families with dependent children, Grant programs—social programs, Employment, Education and training, Day care.

45 CFR Part 256

Aid to families with dependent children, Grant programs—social programs, Employment, Education and training, Day care.

45 CFR Part 257

Day care, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs: 93.037, Child Care and Development Block Grant; 93.560, Aid to Families with Dependent Children; 93.561, Job Opportunities and Basic Skills Training (JOBS) Program; 93.574, At-Risk Child Care)

Dated: March 31, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: April 20, 1994.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, parts 98, 255, 256, and 257 of title 45 of the Code of Federal Regulations are revised to read as follows:

45 CFR Subtitle A

PART 98—CHILD CARE AND DEVELOPMENT BLOCK GRANT

1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 9858.

Subpart A—Purposes and Definitions

2. Section 98.2 is amended by removing and reserving paragraph (z); and revising paragraphs (y) and (cc) to read as follows:

§ 98.2 Definitions.

* * * * *

(y) *Expenditure period* is the time period during which one fiscal year's grant funds must be expended which includes the relevant fiscal year in which the funds were awarded and the succeeding three fiscal years. This provision pertains to all grantees, including State, Territorial and Tribal grantees;

* * * * *

(cc) *Program period* is the time period during which one fiscal year's grant funds may be used to support program activities. The time frame for the program period is the same as that for the expenditure period;

* * * * *

Subpart B—General Application Procedures

§ 98.13 [Amended]

3. Section 98.13 is amended by removing and reserving paragraph (a)(6)(ii).

4. Section 98.16 is amended by revising paragraphs (a)(7)(ii) and (a)(12)(ii); and adding paragraph (a)(12)(iii) to read as follows:

§ 98.16 Plan provisions.

(a) * * *

(7) * * *

(ii) Specification of the grantee's policy for the availability of in-home care and the rationale for that policy;

* * * * *

(12) * * *

(ii) Based on a methodologically sound system for determining payment rates, a justification of the grantee's decision not to provide for differences in payment based on the setting (categories of care), or the age of the child; and

(iii) A description of how differential rates within categories of care, if any, are determined and identification of within-category distinctions;

* * * * *

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

§ 98.30 [Amended]

5. In § 98.30, paragraphs (e) and (g) are removed and reserved.

Subpart E—Program Operations (Child Care Services)—State and Provider Requirements

§ 98.40 [Amended]

6. In § 98.40, paragraph (b)(2) is removed and reserved.

7. Section 98.41 is amended by removing and reserving paragraph (b); and revising paragraph (a)(1) to read as follows:

§ 98.41 Health and safety requirements.

(a) * * *

(1) The prevention and control of infectious diseases (including immunizations):

(i) Grantees must establish immunization requirements as part of their health and safety plans which assure that children receiving services under the Block Grant are immunized. Immunization requirements must be established in accordance with the following guidelines:

(A) State and Territorial health and safety plans must incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State or Territorial Department of Public Health;

(B) Tribes have the option to determine the immunization standards to be incorporated in their health and safety plans, but must identify the source of standards. Tribes may choose from:

(*1*) State Department of Public Health immunization standards; or

(*2*) Indian Health Service immunization standards.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, States may exempt:

(A) Children who are cared for by relatives (defined as grandparents, aunts and uncles);

(B) Children who receive care in their own homes;

(C) Children whose parents object for religious reasons; and

(D) Children whose medical condition contraindicates immunization;

* * * * *

8. Section 98.43 is amended by removing and reserving paragraph (c); and revising paragraphs (b)(1) introductory text, (b)(2) and (e) to read as follows:

§ 98.43 Payment rates.

* * * * *

(b) * * *

(1) Variations in the amount charged for providing child care:

* * * * *

(2) The additional amount charged for providing child care for a child with special needs for services which are not required as an accommodation under the Americans with Disabilities Act.

* * * * *

(e) If a grantee sets a payment rate schedule which includes variation in the payment rate within a category, pursuant to § 98.16(a)(12)(iii), the grantee must describe how the payment differential was determined and what the distinctions within categories are.

* * * * *

§ 98.45 [Amended]

9. In § 98.45, paragraph (d) is removed and reserved.

Subpart F—Use of Block Grant Funds

10. Section 98.50 is amended by removing and reserving paragraph (d)(3); and revising paragraph (d)(2) to read as follows:

§ 98.50 Child care services.

* * * * *

(d) * * *

(2) To meet the requirements of paragraph (d)(1) of this section:

(i) At least 85 percent of the funds reserved for assistance under this section must be expended for services pursuant to paragraph (a)(1) of this section; and

(ii) Not more than 15 percent of the funds may be expended for activities as described in paragraphs (a)(2) and (a)(3) of this section.

11. Section 98.52 is amended by revising paragraph (c) to read as follows:

§ 98.52 Administrative activities.

* * * * *

(c) Expenditures on any administrative activities related to the services under § 98.50 are subject to the requirements and limitation under § 98.50(d), and together with expenditures for quality and availability, must not exceed the limitation under § 98.50(d)(2).

Subpart G—Financial Management

12. Section 98.60 is amended by removing and reserving paragraphs (d)(2), (d)(3), (e), (h)(2); revising the word "obligation" in paragraph (h)(1) to read "expenditure" and revising the word "obligated" in paragraph (h)(1) to read "expended"; and revising paragraphs (d)(1), (d)(4), and (h)(3) to read as follows:

§ 98.60 Availability of funds.

* * * * *

(d)(1) State, Territorial, and Tribal Grantees must expend their allotment in the fiscal year in which funds are awarded or in the succeeding three fiscal years.

* * * * *

(4) Any funds not expended during the expenditure period specified in paragraph (d)(1) of this section will revert to the Federal government.

* * * * *

(h) * * *

(3) If received by the grantee or subgrantee after the expenditure period specified in paragraph (d)(1) of this section, be returned to the Federal government.

* * * * *

13. Section 98.63 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 98.63 Reallotment.

(a) * * *

(1) In the fourth (and last) fiscal year of each expenditure period, the State shall report to the Secretary the dollar amount of funds available for reallotment from the award given in the first fiscal year of that expenditure period. Such report must be postmarked by April 1st.

* * * * *

(b) States receiving reallotted funds must expend these funds in accordance

with § 98.60. The reallotment of funds does not extend the program period for expenditure of such funds.

Subpart H—Program Reporting Requirements

14. Section 98.70 is amended by removing and reserving paragraph (b); and revising paragraph (a) to read as follows:

§ 98.70 Annual report requirement.

(a) Grantees that receive assistance under the Block Grant shall prepare and submit to the Secretary an annual report. The report will be submitted in the manner specified by the Secretary by December 31 and will cover expenditures made by September 30 of that year. Unless otherwise specified by the Secretary, each fiscal year's grant shall be accounted for separately.

* * * * *

45 CFR Chapter II

PART 255—CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES DURING PARTICIPATION IN EMPLOYMENT, EDUCATION, AND TRAINING

1. The authority citation for part 255 is revised to read as follows:

Authority: 42 U.S.C. 602, 603 and 1302.

2. Section 255.1 is amended by revising paragraphs (e)(4) and (i) and adding paragraphs (m) and (n) to read as follows:

§ 255.1 State plan requirements.

* * * * *

(e) * * *

(4) Child care provided or claimed for reimbursement is reasonably related to the hours of participation or employment as described in the State Supportive Services plan.

* * * * *

(i)(1) A description of the methodology used for setting local market rates pursuant to § 255.4(a)(2). Such methodology must address rates established for each category of care (i.e., center, group family day care, and family day care) provided. The description must address variations in the costs of care for infants, toddlers, pre-school and school-age children, whether care is full- or part-time, and reduction in the cost of care for additional children in the same family if such variations exist. If the State chooses to survey in-home care, the methodology used must be included in the description. The rates determined by using the methodologies described must be submitted as part of the State's Supportive Services plan and must be updated periodically, but no less than biennially.

(2) A description of the State's criteria for higher quality care, if any, in accordance with § 255.4(a).

* * * * *

(m) The State's definition of physically or mentally incapable of caring for himself or herself, pursuant to § 255.2(a).

(n) Any conditions and limitations the State IV–A agency has established for providing in-home care, pursuant to § 255.3(c)(2).

3. Section 255.2 is amended by revising paragraphs (a) introductory text and (d)(2) to read as follows:

§ 255.2 Eligibility.

(a) The State IV–A agency must guarantee child care for a dependent child who is: under age 13; physically or mentally incapable of caring for himself or herself, as determined by the State and defined in the State's Supportive Services plan; or under court supervision (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV–E), to the extent that such child care is necessary to permit an AFDC eligible family member to—

* * * * *

(d) * * *

(2) For a period not to exceed one month where child care (or other services) arrangements would otherwise be lost, and:

(i) The subsequent activity is scheduled to begin within that period; or

(ii) The eligible family member is searching for another job.

* * * * *

4. Section 255.3 is amended by revising paragraph (c) to read as follows:

§ 255.3 Methods of providing child care and other supportive services.

* * * * *

(c)(1) If more than one category of child care is available, e.g., center, group family care, family day care, or in-home care, the caretaker relative must be provided an opportunity to choose the arrangement. The State IV–A agency may select the method of payment under paragraph (a) of this section.

(2) The State IV–A agency may establish conditions and limitations under which it will provide in-home care in the State Supportive Services plan.

* * * * *

5. Section 255.4 is amended by removing paragraph (c)(2)(iii); revising paragraphs (a)(2) introductory text, (a)(2) (ii) and (iii); adding new paragraphs (a)(2) (iv) and (v); revising paragraphs (a)(3) (i), (ii), (iii), and (iv); and adding a new paragraph (a)(3)(v) to read as follows:

§ 255.4 Allowable costs and matching rates.

(a) * * *

(2) Except as specified in paragraphs (a)(2) (iv) and (v) of this section, the applicable local market rate must be established:

* * * * *

(ii) For all political subdivisions or for alternative areas which represent reasonable local child care markets based upon their geographic proximity or common characteristics;

(iii) Based on the 75th percentile cost of such categories of care in the local areas (however, where there are only one or two providers of a category of care in a local market area, the rate may be set at the 100th percentile.);

(iv) At State option, at the provider's actual charge for that care which meets the State's objective criteria for higher quality care. For purposes of this paragraph, the States's criteria for higher quality care must be in addition to State licensing or regulatory requirements; and

(v) At the provider's actual charge for care for children with special needs if that actual charge exceeds the local market rate for a child of the same age and in the same category of care who does not have special needs, and provided the additional charge is for services which are not required as an accommodation under the Americans with Disabilities Act.

(3) * * *

(i) Be established for center care, group family care, and family day care;

(ii) Differentiate among care for infants, toddlers, pre-school and school-age children, where applicable;

(iii) Differentiate between full-time and part-time care, if applicable;

(iv) Consider reductions in the cost of care for additional children in the same family; and

(v) Be established for in-home care:

(A) At the level required by Federal and State provisions that govern domestic service employees, without reference to the requirements in paragraph (a)(2) of this section; or

(B) In accordance with paragraph (a)(2) of this section only when such a local market rate would exceed the level required by Federal and State provisions that govern domestic services employees.

* * * * *

PART 256—TRANSITIONAL CHILD CARE

1. The authority citation for part 256 is revised to read as follows:

Authority: 42 U.S.C. 602, 603 and 1302.

2. Section 256.1 is amended by revising paragraphs (a)(3) and (a)(4) and by adding paragraphs (a)(5) and (a)(6) to read as follows:

§ 256.1 State plan requirements.

(a) * * *

(3) The methods and procedures the State IV–A agency shall use to ensure tha fees are collected;

(4) The application requirements established by the State for families requesting TCC;

(5) The State's definition of physically or mentally incapable of caring for himself or herself, pursuant to § 256.2(a); and

(6) Whether the State has elected to provide care under this part:

(i) To families without a request from the family pursuant to § 256.2(b)(3);

(ii) Before employment begins or during breaks in employment pursuant to § 256.2(f); and

(iii) To families who voluntarily cease to receive AFDC pursuant to § 256.2(b)(1)(ii).

* * * * *

3. Section 256.2 is amended by revising paragraphs (a), (b)(1), (b)(3) and (c) and by adding paragraphs (f) and (g) to read as follows:

§ 256.2 Eligibility.

(a) The State IV–A agency must guarantee child care for a child who is: Under age 13; physically or mentally incapable of caring for himself or herself, as determined by the State and defined in the State's Supportive Services plan; or under court supervision, and who would be a dependent child, if needy (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV–E), to the extent that such care is necessary to permit a member of an AFDC family to accept or retain employment.

(b) * * *

(1)(i) The family must have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at § 233.20(a)(11); or

(ii) At State option, the family voluntarily ceases to receive an AFDC benefit as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at § 233.20(a)(11);

* * * * *

(3) The family requests transitional child care benefits, if required by the State, provides the information necessary for determining eligibility and fees, and meets appropriate application requirements established by the State; and

* * * * *

(c)(1) Eligibility for transitional child care begins with the first month for which the family is ineligible for AFDC, for the reasons included in paragraph (b)(1) of this section, and continues for a period of 12 consecutive months.

(2) Families may begin to receive child care in any month during the 12-month eligibility period.

* * * * *

(f) The State IV–A agency may provide child care under this part for an eligible family member who is waiting to enter employment:

(1) For a period not to exceed two weeks; or

(2) For a period not to exceed one month where child care arrangements would otherwise be lost, and:

(i) Employment is scheduled to begin within that period; or

(ii) The eligible family member is searching for another job.

(g) The State IV–A agency may establish a reasonable time limit for accepting TCC requests following the close of the TCC eligibility period.

4. Section 256.3 is amended by revising paragraph (b) to read as follows:

§ 256.3 Fee requirement.

* * * * *

(b)(1) Each State IV–A agency shall establish a sliding fee formula based on the family's ability to pay that provides for contributions from each family toward the cost of care provided under this part.

(2) The State IV–A agency may waive the contribution from a family whose income level is at or below the poverty level for a family of the same size.

* * * * *

5. Section 256.4 is amended by revising paragraph (c) to read as follows:

§ 256.4 Other provisions.

* * * * *

(c) The State IV–A agency must notify all families of:

(1) Their potential eligibility for transitional child care services under this part in writing, and orally as appropriate, at the time they become ineligible for AFDC;

(2) The time limit the State has established for requesting TCC following the close of the TCC eligibility period; and

(3) Their rights and responsibilities under the program.

* * * * *

PART 257—AT-RISK CHILD CARE PROGRAM

1. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 602, 603, and 1302.

2. Section 257.21 is amended by revising paragraphs (a)(6), (m) and (n) and adding paragraph (o) to read as follows:

§ 257.21 State plan content.

(a) * * *

(6) Child care provided or claimed for reimbursement is reasonably related to the hours of employment as described in the State's At-Risk Child Care plan;

* * * * *

(m) A description of the coordination of the At-Risk Child Care program with existing IV–A child care programs, with other Federally-funded child care programs, and with other child care provided through other State, public, and private agencies;

(n) A description of the health and safety requirements, if any, for the prevention and control of infectious diseases (including immunization), building and physical premises safety, and minimum health and safety training appropriate to the provider setting, in accordance with § 255.4(c)(2)(ii) of this chapter and § 257.41(a)(2); and

(o) Any conditions and limitations the State IV–A agency has established for providing in-home care, pursuant to § 257.40(b)(2).

3. Section 257.30 is amended by revising paragraph (c) to read as follows:

§ 257.30 Eligibility.

* * * * *

(c) The State IV–A agency may provide child care under this Part for an eligible family member who is waiting to enter employment:

(1) For a period not to exceed two weeks; or

(2) For a period not to exceed one month where child care arrangements would otherwise be lost, and:

(i) Employment is scheduled to begin within that period; or

(ii) The eligible family member is searching for another job.

4. Section 257.40 is amended by revising paragraph (b) to read as follows:

§ 257.40 Methods of providing child care.

* * * * *

(b)(1) If more than one category of child care is available, e.g., center,

group family care, family day care, and in-home care, the family must be provided an opportunity to choose the arrangement. The State IV–A agency may select the method of payment under paragraph (a) of this section.

(2) The State IV–A agency may establish the conditions and limitations under which it will offer in-home care in the State Supportive Services plan.

* * * * *

5. In § 257.41, paragraphs (a)(3) and (b)(2)(v) are removed and paragraphs (b)(2)(iii) and (iv) are revised to read as follows:

§ 257.41 Child care standards.

* * * * *

(b) * * *

(2) * * *

(iii) Allow providers to register with the State or locality after selection by the parent(s); and

(iv) Be simple and timely.

* * * * *

[FR Doc. 94–11087 Filed 5–10–94; 8:45 am]

BILLING CODE 4184–01–P

federal register

Wednesday
May 11, 1994

Part III

Environmental Protection Agency

40 CFR Part 261, et al.
Hazardous Waste Management System;
Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4881-3]

40 CFR Parts 261, 271, and 302

RIN 2050-AD79

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Organobromine Production Wastes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous waste solids and filter cartridges from the production of 2,4,6-tribromophenol. The Agency is also proposing to add 2,4,6-tribromophenol to the list of commercial chemical products that are hazardous wastes when discarded. As a necessary part of this hazardous waste listing EPA is proposing to add 2,4,6-tribromophenol to the RCRA list of hazardous constituents.

This proposed regulation, if promulgated, will subject the listed 2,4,6-tribromophenol wastes to regulation as hazardous wastes under Subtitle C of RCRA. In addition, 2,4,6-tribromophenol and the listed wastes will automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is proposing for purposes of immediate release reporting under CERCLA section 103 a reportable quantity (RQ) of 100 pounds for 2,4,6-tribromophenol and the listed wastes.

Also, EPA is proposing not to list as hazardous nine waste streams from the production of bromochloromethane, ethyl bromide, tribromophenol, octabromodiphenyl oxide, decabromodiphenyl oxide, and to defer action on one waste stream from the production of tetrabromobisphenol-A.

DATES: EPA will accept public comments on this proposed listing determination until July 11, 1994. Comments postmarked after this date will be marked "late" and may not be considered. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by May 26, 1994.

ADDRESSES: Comments should be submitted to Ed Rissmann at EPA, OSWER, 401 M Street, SW., Washington, DC 20460. The official record of this action is identified by Docket number F-94-OBLP-FFFFF and is located at the following address: EPA Docket Clerk, room 2616 (5305), U.S. EPA, 401 M Street, SW, Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

To request a public hearing on this proposed listing determination, file a request with Mr. David Bussard (5304), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424-9346 (toll-free) or (703) 412-9810, in the Washington, DC metropolitan area. The TDD Hotline number is (800) 553-7672, or (703) 486-3323, locally. For technical information on the proposed listing determination, contact Ed Rissmann at (202) 260-4785.

For technical information on the CERCLA aspects of this rule, contact: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 603-8760.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Statutory and Regulatory Background

These regulations are proposed under the Solid Waste Disposal Act (SWDA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These statutes are commonly referred to as the Resource Conservation and Recovery Act (RCRA) and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992k (42 U.S.C. 6901-6992k).

Section 3001(a) of RCRA, 42 U.S.C. 6921(a), requires EPA to promulgate criteria for identifying characteristics of hazardous wastes and for listing hazardous wastes. Section 3001(b) of RCRA requires EPA to promulgate regulations, based on these criteria, identifying and listing hazardous wastes which shall be subject to the requirements of the Act.

Hazardous waste is defined at section 1004(5) of RCRA, 42 U.S.C. 6903(5). There are two types of hazardous waste. First, hazardous wastes are those solid wastes which may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness. In addition, hazardous wastes are those solid wastes which may pose a substantial present or potential hazard to human health or the environment when improperly managed.

EPA's regulations establishing criteria for listing hazardous wastes are codified at volume 40 of the Code of Federal Regulations (CFR) § 261.11 (40 CFR 261.11). Section 261.11 states three criteria for identifying characteristics and for listing wastes as hazardous.

First, wastes may be classified as "characteristic" wastes if they have the properties described at 40 CFR 261.20 which would cause them to be classified as having the characteristics of ignitability, corrosivity, reactivity and toxicity.

Second, wastes may be classified as acute hazardous wastes if they are fatal to humans at low doses, lethal in animal studies at particular doses designated in the regulation, or otherwise capable of causing or significantly contributing to an increase in serious illness.

Third, wastes may be listed as hazardous if they contain hazardous constituents identified in appendix VIII of 40 CFR part 261 and the Agency concludes, after considering eleven factors enumerated in § 261.11(a)(3), that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed. A substance is listed in appendix VIII if it has been shown in scientific studies to have toxic effects on life forms.

Wastes listed as hazardous are subject to federal requirements under RCRA for persons who generate, transport, treat, store or dispose of such waste. Facilities that must meet the hazard waste management requirements, including the need to obtain permits to operate, are commonly referred to as Subtitle C facilities. Subtitle C is Congress' original statutory designation for that part of RCRA that directs EPA to issue regulations for hazardous wastes as may be necessary to protect human health or the environment. Thus, facilities like incinerators or landfills that are required to comply with RCRA requirements for hazardous waste are referred to as Subtitle C incinerators or landfills.

Subtitle C is codified as Subchapter III of Chapter 82 (Solid Waste Disposal) of Volume 42 of the United States Code, 42 U.S.C. 6921 thru 6939e. EPA standards and procedural regulations implementing subtitle C are found generally at 40 CFR parts 260 through 272.

Solid wastes which are not hazardous wastes may be disposed of at facilities which are overseen by state and local governments. These are the so-called subtitle D facilities. Subtitle D is Congress' original statutory designation for that part of RCRA which deals with federal assistance to state and regional planning efforts for disposal of solid waste.

Subtitle D is codified as Subchapter IV of Chapter 82 (Solid Waste Disposal) of Volume 42 of the United States Code (42 U.S.C. 6941 thru 6949a). EPA regulations affecting subtitle D facilities are found generally at 40 CFR parts 240 thru 247, and 255 thru 258.

Section 3001(e)(2) of RCRA (42 U.S.C. 6921 (e)(2) requires EPA to determine whether to list, as hazardous, wastes generated by various chemical production processes, including the production of organobromines. In response to this mandate, the Agency undertook a two-year study of the industry and, eventually, listed several wastes from the production of ethylene dibromide (EDB) and methyl bromide.

The final rule listing wastes from the production of EDB was published in the **Federal Register** on February 13, 1986 (51 FR 5327). These wastes are listed in Title 40 of the Code of Federal Regulations section 261.32 (40 CFR 261.32) and are designated by EPA hazardous waste numbers K117, K118, and K136. The final rule listing wastes from methyl bromide production was published on October 6, 1989 (54 FR 41402). These wastes are listed at 40 CFR 261.32 and are designated by hazardous waste codes K131 and K132. Methyl bromide and ethylene dibromide are also on the Appendix VIII list of hazardous constituents.

In June of 1991, EPA entered into a proposed consent decree in a lawsuit filed by the Environmental Defense Fund, *et al.* (*EDF* v. *Reilly*, Civ. No. 89–0598 (D.D.C.)), in which the Agency agreed to publish a proposed determination as to whether or not to list as hazardous wastes from the production of five other organobromine chemicals by April 30, 1994 and to promulgate a final decision on whether to list on or before April 30, 1995. The Agency reserves the right to evaluate wastes from the production of other organobromine compounds in the future, if and when such an evaluation is deemed necessary.

To provide a sound technical basis for this listing determination, EPA conducted another study of the organobromine chemicals industry in 1991 and 1992. Six firms were identified as currently manufacturing organobromine chemicals at eight facilities in the United States. Under the authority of RCRA Section 3007 (42 U.S.C. 6927), EPA sent questionnaires to these firms and four of them were selected for engineering site visits. These four facilities account for over 99 percent of total production. Samples of process residuals were collected during the site visits to familiarize the Agency with the types of materials generated by the industry. Later in the study, record samples were collected at facilities of the two largest domestic producers. The next section summarizes today's proposal and describes the basis for EPA's decision to list one waste from this industry. The Listing Background Document for this listing determination contains a detailed description of the Agency's basis for proposing to list one waste, and to not list ten other waste streams. The public version of this document, which does not contain Confidential Business Information can be copied at the RCRA public docket. See **ADDRESSES** section.

The third criteria described above for listing hazardous wastes in 40 CFR 261.11, is applicable to this proposal on organobromine wastes. That is, wastes may be listed if they contain hazardous constituents identified in Appendix VIII of 40 CFR Part 261 and the Agency concludes the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed.

With respect to the other two criteria, the wastes under consideration here are not acutely hazardous and "characteristic" wastes are not listed separately, since their classification depends upon whether they qualify as wastes based on various tests described in the regulations. EPA notes that any of the organobromine wastes could be classified as "characteristic" wastes if they "fail" the applicable tests.

Consistent with its regulations, EPA determined whether there were present any Appendix VIII constituents and whether there was information on any other constituents of the waste that could lead to health or environmental concerns. The health effects data, along with other factors (generally related to exposure) required to be considered under 40 CFR 261.11(a)(3), were then evaluated to decide whether the wastes should be listed as hazardous wastes. These factors include the plausible types of mismanagement scenarios to which the wastes could be subjected and the potential of the constituent or any toxic degradation product to migrate from waste into the environment under the improper management scenarios (40 CFR 261.11(a)(3) (iii) and (vii)).

After consideration of data on health effects and exposure to the wastestreams, EPA decided that certain wastes from 2,4,6-tribromophenol production warrant listing. None of the constituents have previously been listed in Appendix VIII, however. Accordingly, EPA is proposing to list 2,4,6-tribromophenol as an Appendix VIII constituent.

II. Summary of Today's Proposal

A. Organobromine Chemicals Industry Overview

The organobromine chemical-producing industry in the U.S. is geographically limited by the location of underground bromide-bearing brine deposits. The only major deposits of this type in the United States are located in Michigan and Arkansas. Organobromine chemicals are no longer produced on a large scale in Michigan. EPA identified two firms in southern Arkansas that produce the organobromine chemicals listed in the EDF consent decree. These two firms account for 95% of all organobromine chemical production in the U.S.

The source of all bromine produced currently in the U.S. is the brine deposit in the Smackover Formation in Union, Lafayette, and Columbia Counties, Arkansas. Total demand for bromine has fallen 25% since 1979 and domestic bromine production fell by four thousand metric tons between 1991 and 1992, so there is little incentive for the construction of new bromine extraction plants. In addition, all of the mining rights for bromine-bearing brines in these counties are controlled by two corporations. According to the U.S. Bureau of Mines, these deposits are likely to satisfy domestic demand for sixty years. For these reasons, EPA believes that it is very improbable that any new producers using substantially different technologies will enter the organobromine chemicals industry during the next several decades.

At the time of the first industry study in 1984, ethylene dibromide (EDB) was the most important product of the organobromines industry. EDB was used together with tetraethyl lead in additives designed to increase the octane rating of gasoline. Other industry products included methyl bromide, used as a soil fumigant, and brominated fluorocarbons, which are sold mainly as fire-extinguishing agents.

During the decade that has elapsed since the original industry study, the product mix has changed, due primarily to the advent of several environmental regulatory programs. Vehicles requiring unleaded gasoline were introduced to the U.S. market in 1971, and the phase-out of leaded gasoline is now almost complete. Other nations have instituted similar programs, though on different timetables, which has reduced demand for EDB. The use of methyl bromide as a soil fumigant has been restricted because of the toxicity of this material. Two of the important brominated fluorocarbons, Halon 1211 and Halon 1301, are being phased out of production under the terms of the Montreal Protocol on Substances that Deplete the Ozone Layer, to which the United States is a signatory.

The majority of organobromine chemicals manufactured currently are sold as flame retardants. Most of these are solid compounds that are incorporated into polymer mixes. The polymers then are used to manufacture a variety of household and industrial products, including electronic circuit boards, television and computer cases, and packaging and insulating foam. Smaller volume organobromine chemicals are produced by four smaller firms. The principal uses for these products are as reagent chemicals and pharmaceutical intermediates. These low volume chemicals are produced on a batch basis with annual production often being a few batches per year.

B. Description of Processes Used, Wastes Generated, and Waste Management Practices Employed

1. Processes Used and Wastes Generated

As discussed above, EPA conducted engineering site visits at four organobromine-producing firms, based on the information received from RCRA Section 3007 questionnaires. Two of these four firms have direct access to sources of elemental bromine (*i.e.*, the underground brine deposits) and use it to produce substantial volumes of organobromine flame retardants. All other firms in the industry purchase elemental bromine and use it to produce smaller volumes of special-purpose pharmaceutical and chemical intermediates. Frequently, these items are produced under contract for the pharmaceutical firms.

The processes at the two major sites also differ from those at the smaller producers with respect to waste management practices. The smaller producers manage all of their solid wastes as hazardous and ship them off site to incinerators or landfills operating in accordance with the standards promulgated under authority of RCRA Subtitle C. Generally, their production contracts call for the wastes to be sent to the firms ordering these chemicals. The pharmaceutical firms then incinerate these wastes from the organochemical production process.

Because bromine is an element and cannot be destroyed by chemical transformations, the production processes at the major facilities are designed to make the most effective use of all bromine extracted from the brine. As a result, there are many bromine/bromide recovery processes built into the operation. A generalized description of the wastes and management practices at the major sites follows.

Bromide-bearing brine from the Smackover Formation is pumped to the surface and routed to the bromine plant, where it is acidified, and chlorinated to convert the bromide to bromine. The reaction generates a sodium chloride by-product which remains in the brine. The bromine then is volatilized with steam and condensed, dried, and used on site as a feedstock. Most organobromine chemicals are produced by simple one- or two-step reactions of bromine with an organic feedstock. Many of these reactions liberate hydrogen bromide gas, which is normally scrubbed in sodium hydroxide solution, forming a sodium bromide stream that often is recycled to the bromine plant. Alternatively, the gas is scrubbed with a lime suspension to produce calcium bromide, a saleable by-product.

Concentrated sulfuric acid is used as a drying agent for elemental bromine. The spent acid is sold back to the sulfuric acid producer, who uses it to produce virgin sulfuric acid.

At major production sites, process wastewaters containing recoverable amounts of bromine are recycled to the bromine plant for bromine recovery. The volume of these wastewater streams exceeds that of all other waste streams combined. Additionally, over 200,000 metric tons per year of unrecycled process wastewaters are generated at the two major sites from production of the five organobromine chemicals listed in the consent decree. An additional 450,000 tons of wastewaters are generated from tribromophenol manufacture. Less than 800 tons of process wastes solids are generated. These include spent filters, floor sweepings and chemical product that does not meet commercial specifications for quality—so-called "off-spec" product. By comparison, the amount of waste generated by the minor producers is cumulatively less than 100 tons and is divided among several dozen processes, most of which are operated only a few days per year. Due to the very low volumes and periodic generation of these wastes by the minor producers, the analysis for this listing determination focused only on the major production plants. The minor producers do not manufacture any of the products listed in the EDF consent decree. Table I summarizes the wastes and their constituents of potential concern generated from production of organobromine products studied.

TABLE I.—SUMMARY OF ORGANOBROMINE PRODUCTION WASTES

Product	Waste stream	Constituents of potential concern
Dibromomethane/bromochloromethane	Filters	Methylene chloride.[2]
	Wastewaters	Bromochloromethane Dibromomethane.
Ethyl bromide	Filters	Ethyl bromide.
	Wastewaters	Ethanol.
Tetrabromobisphenol-A	Off Spec Product	Tetrabromobisphenol-A Tribromophenol.
	Wastewaters[1]	
Octabromodiphenyl oxide	Wastewaters	Octabromodiphenyl oxide Toluene.[2]
	Off Spec Product & Filters	Brominated dibenzofurans.
Decabromodiphenyl oxide	Off Spec Product & Filters	Decabromodiphenyl oxide.
	Wastewaters	
Tribromophenol	Wastewaters	Tribromophenol.
	Filters & Filter cake & Off Spec Product	

[1] Methyl bromide and tetrabromobisphenol A are generated by the same process. The process wastewaters are the listed waste K131.
[2] Appendix VIII constituents.

2. Waste Management Practices

The largest volume wastes generated by the organobromines industry are wastewaters disposed by injection into underground deep wells regulated under the Safe Drinking Water Act Underground Injection Control (UIC) program (40 CFR parts 144–148). Some of the combined waste streams being deep well-injected are classified as hazardous wastes under 40 CFR part 261. As a result, the industry must comply with applicable regulations under the Land Disposal Restrictions (LDR) program in 40 CFR part 268, which require that hazardous wastes may not be land-disposed without treatment to specified levels or by specified methods. Disposal by underground injection is included in the definition of "land disposal" in 40 CFR 268.2. Specific restrictions on the underground injection of hazardous wastes are codified in 40 CFR part 148.

One of the two major production plants submitted a petition under 40 CFR 148.20 for an exemption from these LDR requirements for the disposal of wastes in wells located at its plant. They provided site-specific information to demonstrate that there would be no migration of the injected wastes to an underground source of drinking water for as long as the wastes remain hazardous (40 CFR 148.20). Their demonstration showed that the geological and geochemical conditions at the site and the physicochemical nature of the wastestreams were such that the hazardous constituents in the fluids will not migrate within 10,000 years vertically or laterally. The petition was approved by the Agency and the exemption was granted. EPA expects the facility to continue this form of disposal at the same level in the future regardless of this listing determination because of economic considerations. As a result, EPA believes that wastes being disposed by underground injection at this plant will not pose a risk to human health and the environment.

The situation with respect to the second major facility is different. This facility consists of several plants located a few miles apart. Each plant has its own set of injection wells. One plant, which according to the Agency's information generates listed hazardous wastewater, has two wells into which listed hazardous waste is currently injected. Another, which according to the Agency's information does not produce a listed wastewater, has at least three wells which do not accept hazardous waste.

None of the wells at this facility have an approved no-migration petition. Therefore, for currently listed wastewaters, the facility will have to consider waste treatment prior to disposal. An option under consideration by the plant is the construction of a wastewater treatment plant to treat the wastewaters prior to either release to surface waters or deep well injection. The facility is not likely to want to abandon the use of deep well injection for economic reasons. Shipment of wastewaters off site would be economically prohibitive given the large wastewaters volumes involved. For unlisted wastewaters, the most plausible management scenario would be continued deep well injection.

The Agency believes that it would be unlikely that the facility would attempt to store wastewater in lagoons. The area has a moist climate, so evaporation is not a viable option. The plant is currently under several consent agreements to remove contamination resulting from the previous use of unlined lagoons for temporary wastewater storage.

Therefore, the Agency selected the plausible mismanagement scenario for modeling purposes for unlisted wastewaters to be the current practice of underground injection for this plant's wastewaters. EPA has no information or reason to believe that, if not listed, the wastewaters would be managed in a different manner.

In addition to underground injection, certain other waste management practices commonly used in the organobromine chemicals industry are regulated by specific RCRA regulations. Both major plants use Bromine Recovery Units (BRUs) to recover bromine values from organic liquid and vapor waste streams. In these units, the organics are burned and the combustion products are removed by a wet scrubber. The BRUs are halogen acid furnaces (HAFs), which meet the regulatory definition of industrial furnace in 40 CFR 260.10.

The combustion of hazardous waste in industrial furnaces is regulated under 40 CFR part 266, subpart H which regulate air emissions from these units and require monitoring and analyses. These regulations impose emissions standards and air quality limits for the BRUs, which are designed to control and reduce the level of risk posed by this management practice (*e.g.*, 40 CFR 266.104(e) establishes controls for dioxin- and furan-containing wastes). Both major plants burn listed spent solvents and still bottoms in these units; therefore, they are already subject to the performance standards of part 266, subpart H. EPA believes that residuals managed in this manner and in compliance with applicable regulations do not pose any additional risk to human health and the environment because the facilities are currently in compliance with their permits to operate these units. EPA has not found any compelling evidence indicating that the major plants would manage these wastes in any other way. These recovery units are integrated into the major plants and abandoning their use would require considerable plant modifications

to be made with no economic benefit to the facilities.

The solid residuals generated in organobromine chemicals production are currently being shipped off site to commercial Subtitle D landfills and to Subtitle C disposal facilities, even though some of these residuals are not regulated as hazardous wastes. Other wastes (*e.g.*, spent adsorbents, filter cakes, and floor sweepings) are being incinerated. At the smaller firms production contracts specify that wastes be shipped to incinerators operated by the pharmaceutical industry in order to minimize future potential liability. The most plausible mismanagement scenario for solids is placement in unlined Subtitle D landfills. The plants currently are not required to send unregulated wastes to Subtitle C facilities. Because of the lower cost and wider availability of Subtitle D facilities, the Agency feels that this is the most reasonable mismanagement scenario.

C. Description of Health and Risk Assessments

The Agency realizes that it has incomplete toxicological data on several constituents identified in individual waste streams. Nevertheless, sufficient information does exist to reach the reasoned decisions shown in Tables 2a & b. The rationale for these decisions follows.

TABLE 2a.—BASIS FOR LISTING DETERMINATION

Product	Wastestream	Analysis	Decision
Dibromomethane	Filters	De minimis stream (less than 1 kkg/yr) One producer	No list.
	Wastewaters	Deep well injected at site with approved-no migration petition (only one producer).	No list.
Ethyl bromide	Filters	De minimis stream (less than 1.5 kkg/yr)	No list.
	Wastewaters	Only constituent identified is ethanol at low concentration	No list.
Tetrabromobisphenol A	Wastewaters	Stream is already listed as K131 for methyl bromide. Also contains 15,000 ppm tribromophenol.	Already listed waste.
Octabromodiphenyl oxide.	Filter cake	Toluene and brominated dibenzofurans present at levels below concern. Assuming worst case for leachate, risk estimated to be below 10^{-6} for octabromodiphenyl oxide.	No list.
	Wastewaters	Major constituent of concern, brominated dibenzofurans, shows minimal risk; solubility of octabromodiphenyl oxide is very low; modelling of worst case for wastewaters showed risk below 10^{-6} for octabromodiphenyl oxide.	No list
Decabromodiphenyl oxide.	Filter cake	The major constituent in waste (decabromodiphenyl oxide) could not be quantified. Assuming worst case for leachate, risk below 10^{-6} level because of very low solubility for this chemical.	No list.
	Wastewaters	The major constituent in waste (decabromodiphenyl oxide) could not be quantified. Assuming worst case for leachate, risk below 10^{-6} level because of very low solubility.	No list.

TABLE 2b.—BASIS FOR LISTING DETERMINATION

Product	Wastestream	Analysis	Decision
Tetrabromobisphenol A	Off-specification product.	Inadequate toxicology data for major constituent of concern, tetrabromobisphenol A; not amenable to surrogate analysis. Waste also expected to contain tribromophenol, potentially of concern, but unquantified in waste. None found in leachate from landfill where waste was deposited.	Defer action.
Tribromophenol	Wastewaters	Inadequate toxicology data on major constituents in waste, tribromophenol and dibromophenol. Used surrogate analysis for tribromophenol. Risk analysis shows only low risks; tribromophenol not detected in groundwater at site. (Also, level of tribromophenol in this waste is 2000 times less than the listed hazardous waste, K131.).	No list.
	Filter cake	Used surrogate analysis for tribromophenol. Leachate analysis estimates risk of 10^{-3} to 10^{-5} if waste disposed in unlined Subtitle D landfills.	List as hazardous waste.

1. Toxicological Information—Use of Structural Activity Relationships

While many chlorinated organic compounds are used widely and have been studied in great detail, their brominated analogs are more specialized and have not been investigated in the same detail. EPA has found that no reliable health effects data directly showing significant subchronic toxicity are available for a few of the compounds identified in the record samples from this industry. For the constituents of concern, validated health effects data, directly showing subchronic toxicity, are not available for four compounds: ethyl bromide, tetrabromobisphenol-A, tribromophenol, and the brominated dibenzofurans. Because of the lack of data on these compounds, the Agency explored the use of structure activity relationships to develop toxicological values for these compounds. Structure activity relationships involve the use of health effects information for a compound with a very similar chemical structure and properties to that of the chemical of concern. The Agency determined that this technique could be used for 2,4,6-tribromophenol and for brominated dibenzofurans because the chemical behavior and mechanism of action for these compounds is expected to be similar to their chlorinated analogues.

For ethyl bromide and tetrabromobisphenol-A, this technique could not be used because suitable

surrogate compounds, for which data exist, could not be found. No toxicological data exist for other halogenated derivatives of bisphenol A, and ethyl bromide differs from its chlorinated congeners with respect to its ability to undergo hydrolysis and other important reactions. The basis for the listing determinations for the wastes with these two compounds is discussed later in this preamble.

At the present time, inadequate toxicity data have prevented EPA from establishing a verified or unverified human health reference value for 2,4,6-tribromophenol (TBP). The structures of TBP and 2,4,6-trichlorophenol (TCP) are sufficiently similar to be considered halogenated congeners of phenol, and their toxicities are explainable in terms of identified molecular mechanisms. The relative quantitative activities of halogenated phenol congeners such as TBP and TCP are derived from the ease of formation and reaction of these compounds and their metabolites. Both halogenated phenols contain three symmetrically placed bromine or chlorine substituents which are difficult to remove by chemical substitution. The presence of difficult-to-remove substituents at the ortho and para positions inhibits oxidative decomposition of these moieties via formation of cyclic ketone intermediates. EPA has used this information to develop a quantitative structure-activity relationship (QSAR) analysis for TBP. The critical endpoint of concern for TCP and TBP is carcinogenicity. The Agency has determined that, based on QSAR analysis, the long-term toxicity of TBP and TCP are essentially the same. For today's proposal, the Agency has estimated the cancer slope factor for TBP to be the same as TCP, or 1.1 x 10^{-2} (mg/kg per day)$^{-1}$. In addition, data on TBP analyzed by EPA's Office of Pollution Prevention and Toxics indicated a "low to moderate" concern for oncogenicity, mutagenicity, liver and kidney toxicity, developmental, and reproductive toxicity. The Agency's QSAR analysis reports for TBP are available in the docket of today's proposal. See ADDRESSES section.

With regard to dibenzofurans, quantitative data comparing the potency of brominated dioxins and furans to their chlorinated counterparts are also relatively sparse. Consensus among most of the studies supports the view that brominated analogs are less potent than the chlorinated dioxins and furans, although several studies suggest that the groups are equipotent when considered on a molar basis. EPA estimated a potency factor of 0.3 for 2,3,7,8-tetrabromodibenzo-p-dioxin (TBDD) relative to 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD). This report is available in the docket. See ADDRESSES section. However, application of the toxicity equivalency factor (TEF) methodology to all of the BDFs is not currently possible because of the lack of research data. EPA conducted an analysis assuming 30–100% toxicity for the brominated furans as compared to the chlorinated ones and used the 100 percent value for making risk-based decisions. EPA believes this is a conservative approach that will ensure protection of human health and the environment. The Agency requests comment on this approach.

For all other compounds, the Agency is basing its determination of whether to list on constituents for which adequate health effects data exist. (For a complete listing of the constituents identified in the samples of wastes from the production of chemicals listed in the EDF consent decree and their concentrations, see the Background Document for this proposed listing determination, available in the RCRA public docket.)

In summary, published health-based data exist for all but four of the waste constituents of concern. Inadequate data exist for tetrabromobisphenol-A, ethyl bromide, the brominated dibenzofurans and tribromophenol. Structure activity-derived health-based information is available and was used for the brominated dibenzofurans and tribromophenol.

Quantitative Structure Activity Relationships (QSARs) have been used in other ways in other EPA programs. For example, EPA uses QSARs in evaluating premanufacturing notice data submitted by industry under TSCA. The Agency may require additional testing of the chemical being reviewed based on a QSAR analysis.

However, this is the first time the Agency is basing a listing determination for a wastestream on QSAR analysis. The prospect of using QSARs to identify wastes for regulation holds significant promise for the Agency. It is one way to evaluate some potentially hazardous constituents without requiring expensive and time-consuming toxicity testing. However, the Agency recognizes that the approach could result in additional regulatory effects on some waste generators, local governments, or other federal agencies. In addition, the use of QSARs in listing determinations could have broad policy implications for EPA. Therefore, the Agency solicits comment on the following:

1. Under what conditions is the use of QSAR valid in making hazardous waste listing determinations?

2. Is there another way to characterize the risk potential of wastestreams for which there is a lack of toxicity data on the sole or the primary constituent in the wastestream? (Note that limited resources may restrict the ability of the Agency to conduct testing of the compounds involved).

3. What type of data would help to either support or refute the predictions made by QSAR?

2. Plausible Mismanagement Scenario

The Agency developed baseline risk estimates by selecting plausible mismanagement practices based on information collected in the RCRA Section 3007 survey for current management operations. For wastewaters, the Agency selected the plausible mismanagement practice to be the current practice of deep well injection. The Agency has no information or reason to believe that, if not listed, the wastewaters are likely to be managed in a different manner, except if pretreatment of wastewaters is required prior to injection. For sludges and waste solids, the Agency selected the plausible mismanagement to be an unlined landfill. Currently, a portion of the waste goes to a lined Subtitle D landfill. In addition, the Agency has information that a portion of these wastes, while not regulated as hazardous, are managed as hazardous with disposal in Subtitle C landfills. However, the Agency lacks adequate information showing that, if not listed as hazardous, the wastes would continue to be disposed in lined landfills and result in significantly lower estimates of potential risk. The Agency requests comment on this approach to modelling plausible mismanagement practices.

3. Risk Analysis

Risk characterization approach. The risk characterization approach follows the recent EPA Guidance on Risk Characterization (Habicht, 1992) and Guidance for Risk Assessment (EPA Risk Assessment Council, 1991). The guidance specifies that EPA risk assessments will be expected to address or provide descriptions of: (1) Individual risk to include the central tendency and high-end portions of the risk distribution, (2) important subgroups of the population such as highly exposed or highly susceptible groups or individuals, if known, and (3) population risk. In addition to the presentation of results, the guidance also specifies that the results portray a

reasonable picture of the actual or projected exposures with an open discussion of uncertainties.

Individual risk. Individual risk descriptors are intended to convey information about the risk borne by individuals within a specified population and subpopulations. These risk descriptors are used to answer questions concerning the affected population, the risk levels of various groups within the population, and the average risk for individuals within a population of interest. The approach used in this analysis for characterizing baseline individual risk included: (1) Identifying and describing the population of concern for an exposure route; (2) determining the sensitivity of the model parameters used in the risk estimation; (3) estimating central tendency and high-end values for the most sensitive parameters in the risk estimation procedures; and (4) calculating risk for an exposure pathway that provides a characterization of the central tendency and high-end risk descriptor.

Population risk. Descriptors of population risk are intended to convey information about the risk borne by the population or population segment being studied. These risk descriptors are used to answer questions concerning the number of cases of a particular health effect that probabilistically could occur within the population during a given time period, the number of persons or percent of the population above a certain risk level or health benchmark (e.g., RfD or RfC), and risk for a particular population segment.

Risk assessment. The analysis of risks was developed using both the input of derived or measured toxicological information and the modelling of waste mismanagement scenarios. Specifically, for disposal of solids in unlined landfills, the concentration of the constituents of concern in the landfill leachate first was determined using the Toxicity Characteristics Leaching Procedure (TCLP) on selected record samples, or when TCLP data were lacking, by assuming a leachate concentration based on the aqueous solubility of the constituent. It then was assumed that the leachate would be diluted by a factor of 100 (as described in the Toxicity Characteristic Rule 55 FR 11798, March 29, 1990) before reaching the nearest drinking water well. The resulting diluted concentrations can be then compared with the health-based values. In the case of this analysis, a one-in-a-million (10^{-6}) risk level or hazard quotient of 1 was used.

For wastewaters, the situation was more complicated. One facility has been granted a no-migration variance from the land disposal restrictions. The second facility, which consists of several separate plants, has not obtained such a variance. The plants at the second facility currently dispose of process wastewaters by deep well injection. Modelling for specific wastewater streams was based on the possibilities of leakage of injected wastewaters from the injection zone upward to a drinking water aquifer through the abandoned oil and gas wells in the area. Details of this modelling are given in the Risk Modelling Background Document and summarized in the individual wastewater risk assessment to be discussed in the following sections.

D. Basis for Listing Determinations Decisions

1. Waste Specific Risk Analyses

Risk analyses were performed on eleven individual waste streams. The models selected for individual mismanagement scenarios are described in the individual sections which follow.

a. *Wastes From Production of Bromochloromethane/ Dibromomethane*—i. Solids. Dibromomethane is a low-volume product with limited commercial applications; therefore, it is unlikely that other firms will enter the marketplace. The only solid wastes generated from the production of dibromomethane are spent filters used to remove rust and other particulate matter from the product. About two drums of the material are generated per year. As a result, the Agency feels the quantity is de minimis. The filters are changed yearly and the spent filter material is sent to a Subtitle C incinerator. The waste is generated in small quantities and is mixed with other halogenated solids prior to incineration at the Subtitle C facility. As a result, the Agency believes that although the waste generated from the production of dibromomethane contains toxic constituents, it does not pose a threat to human health and the environment because of the small quantities generated and current management practices. The Agency is proposing a no-list decision.

ii. Wastewaters. Dibromomethane and bromochloromethane are manufactured as co-products at only one facility in the U.S., which has an approved no-migration petition for its deep well injection unit. The approved petition means that the waste will not migrate from the formation into which it is being injected and will therefore not pose risk sufficient to warrant listing.

b. *Wastes From the Production of Ethyl Bromide*—i. Solids. Ethyl bromide is manufactured in low volumes at only one facility. The only solid waste stream consists of spent filter materials used to remove impurities from the product. This waste contains about 90,000 parts per million ethyl bromide and is generated in quantities of 6 drums per year which is sent to Subtitle C facilities for treatment and disposal. High dilution with other wastes placed in the landfill would reduce leachate concentration levels to below those for reasonable concern. The Agency feels that although the waste does contain toxic constituents, based on the production history of this chemical, it is unlikely that other firms will enter the market and that, because of the minimal waste quantities generated and the current waste management practice, there is no need for a specific listing of the filters.

ii. Wastewaters. The wastewater stream is condensate water containing only small amounts of ethanol as a contaminant. This wastestream contains no other contaminants of concern and is managed by deepwell injection. Prior to injection, the ethanol-containing stream is mixed with wastewaters from other processes and the resulting mixed stream thus is diluted by a factor of over 1,000. As a result, the Agency believes that the ethanol content of the combined stream poses little to no risk to human health or the environment, and proposes not to list this wastestream.

c. *Wastes From the Production of Tetrabromobisphenol-A*—i. Solids. The solid wastes generated from the tetrabromobisphenol A process consist of spilled product and floor sweepings from the production area. This material currently is managed in Subtitle C facilities. About 150 tons of this waste are generated annually. Bisphenol-A is manufactured by condensation of phenol and acetone. As a result, commercial grade bisphenol-A may contain variable low levels of phenol and, therefore, the brominated material is expected to contain some brominated phenols. Some of these will co-precipitate with the product during the process and be incorporated into the solid product.

At present, the Agency has insufficient information to characterize the amount of the brominated phenols (including tetrabromobisphenol-A) in the product or their leachability from the product matrix. EPA requests any information on the amount of brominated phenols in the product and their leachability from the product

matrix. At this time, the Agency also does not have information on the toxicity of tetrabromobisphenol A, and requests any information commenters may have on its toxicology, including the existence of any toxicological analogues for tetrabromobisphenol A.

Record sampling of an on-site landfill at one plant where these solids were formerly disposed for a number of years showed the absence of any brominated materials in the landfill leachate. Given the lack of adequate information to perform a risk analysis at this time, the Agency is concerned about being conclusive about the potential hazard of this waste stream and its potential to migrate to ground water if managed in an unlined landfill. The Agency proposes to defer for this waste stream a listing determination and requests submission of both characterization and toxicological data, if available. EPA will evaluate carefully all public comments and information received in response to this notice. Particular attention will be paid to any data submitted which tend to either support or refute a finding of risk to human health and the environment from wastes from the production of tetrabromobisphenol A. Based on comments received, including any data, EPA may choose, rather than deferring, to promulgate a final determination to either list or not list tetrabromobisphenol A waste as a hazardous waste under RCRA.

ii. Wastewaters. Wastewaters from the manufacture of tetrabromobisphenol A are already listed and carry the hazardous waste code of K131. Methyl bromide and tetrabromobisphenol A are produced in the same process. Process wastewater originates from the distillation step where methyl bromide is recovered. The Agency feels that no further action is needed for the waste stream.

d. *Wastes From the Production of Octabromodiphenyl Oxide.*—i. Solids. Solid wastes such as filter cakes typically are disposed of in landfills. This has been the practice of the major organobromine chemicals manufacturers for many years. Currently, these wastes are being shipped to Subtitle C hazardous waste facilities. However, it would be possible for the generators to change their disposal practices and direct these materials to Subtitle D landfills. The quantities of these wastes generated are not de minimis as was the case for dibromomethane solid wastes. Toluene is present in filter cakes from the production of octabromodiphenyl oxide. To evaluate the potential risks associated with filter cake containing toluene, EPA applied the Agency's Organic Leachate Model (51 FR 27062, April 29, 1986) to estimate the maximum amounts of toluene that would be expected to leach from the filter cake in an open landfill environment. The Agency also sampled the on-site landfill at one production site where some of this waste was disposed. The sampling of the landfill leachate did not detect any toluene present. The toluene concentrations in the filter cake were used as input to the Agency's Composite Model for Landfills (56 FR 32993, July 18, 1991) to estimate high-end (95th percentile) concentrations of toluene in a hypothetical receptor well. The hypothetical well concentrations derived from this analysis are about one order of magnitude below the Maximum Concentration Level (MCL) for toluene promulgated by regulation under the Safe Drinking Water Act. The formulae used and a more detailed discussion of the application of these models to the waste samples can be found in the Background Document, available in the RCRA public docket. See **ADDRESSES** section. Because the modelled leachate levels are below acceptable drinking water levels, EPA does not believe that toluene-containing filter cake wastes generated in the production of octabromodiphenyl oxide pose a threat to human health and the environment; thus, the Agency proposes not to list this wastestream. The waste solids also contained about 4.4 ppb of brominated dibenzofurans (most of which were the hepta isomer), which the Agency believes are among the least toxic of the brominated dibenzofurans. The toxicities of these materials were evaluated in terms of equivalence to that for tetrachlorodibenzo-dioxin (TCDD). The Agency has concluded that the risk posed by this constituent is below the 10^{-6} level.

Also, the health-based for a one-in-a-million risk level for octabromodiphenyl oxide using standard intake and exposure assumptions is 0.1 mg/L. No leachate data are available for this waste. However, the Agency assumed an upper-bound leachate concentration of 0.2 mg/L based on the solubility of octabromodiphenyl oxide. Assuming a dilution factor of 100 is achievable during migration to the nearest drinking water well, the concentration in potable water would be below that of concern. As a result, EPA is proposing not to list this waste stream based on low estimated exposure to toxic constituents.

ii. Wastewaters. While the Agency has no quantifiable concentration data on octabromodiphenyl oxide found in the wastewaters, adequate data exist on brominated dibenzofurans found in the generated wastes.

Brominated dibenzofurans were detected in some of the record samples from octa- and decabromodiphenyl oxide processes. Studies conducted for EPA's Office of Pollution Prevention and Toxics and by research groups in Germany and the Netherlands show that brominated furans can be formed during the manufacture of brominated diphenyl ethers; as well as during their fabrication into polymers. The evidence currently available to the Agency indicates that brominated dioxins and furans may range from 30–100% as toxic as their chlorinated counterparts. Using this approach, a record sample of wastewater from the octabromodiphenyl oxide unit showed a maximum toxicity equivalent of 3.7×10^{-7} mg/L of 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) equivalent. Assuming a 100-fold dilution of the waste prior to reaching a drinking water well, the level would be below the MCL for 2,3,7,8–TCDD, which is 3×10^{-8} mg/L. The Agency selected the highest toxicity value in making this analysis.

Based on this evaluation, the Agency is proposing not to list this waste stream for brominated dibenzofurans, because EPA believes that estimated exposure levels to toxic constituents are sufficiently low so as to not pose a threat to human health and the environment.

The Agency was unable to quantify levels of octabromodiphenyl oxide present in wastewaters. However, the solubility of the chemical is only 0.2 mg/L. The flow of wastewaters from this process represents less than one percent of the total amount of process wastewater injected. The health-based level for a one-in-a-million risk level for octabromodiphenyl is 0.1 mg/L. Due to the high level of dilution occurring prior to injection, the resulting concentration of the toxic chemical expected to reach drinking water aquifers is well below levels of concern.

e. *Wastes From the Production of Decabromodiphenyl Oxide*—i. Solids. The production of decabromodiphenyl oxide generates solid wastes consisting of collected spilled product. Only limited analytical results were obtained from the record sampling of this waste and no TCLP leachate data were obtained for this compound. However, the Agency assumed an upper-bound leachate concentration of 0.2 mg/L based on the aqueous solubility of the constituent. The health-based level for a one-in-a-million risk level for this compound is 0.35 mg/L, (assuming exposure of drinking 2.0 L/day for a 70

year exposure period) so the concentration in the leachate is already below the level of concern before any further dilution. Therefore, the Agency is proposing not to list this wastestream.

ii. Wastewaters. The manufacture of decabromodiphenyl oxide also generates a wastewater stream. The Agency was unable to quantify the amount of the product in the wastewater stream. Based on the process chemistry, however, a small amount of product would appear in the stream. The solubility of decabromodiphenyl oxide is less than 0.2 mg/L. This chemical has a health-based level of 0.35 mg/L so the leachate concentration is already below the level of concern even before the subsequent significant dilution occurs. Therefore, the Agency is proposing to not list this wastestream.

f. *Wastes From the Production of Tribromophenol*—i. Solids. Solids from the production of tribromophenol (TBP) consist of spilled materials, off-specification product and spent filter cartridges which were used to remove entrained TBP particulates from the gaseous hydrogen bromide coproduct. The one plant manufacturing this chemical mixes the three wastes together prior to shipment off site for land disposal. Most of this waste is sent to a Subtitle C hazardous waste facility. However, some is being sent to a Subtitle D landfill.

Inadequate toxicity data for tribromophenol (TBP) have prevented the Agency from establishing a human health reference value for tribromophenol (TBP). Therefore, as previously discussed, the Agency performed a structure activity relationship (SAR) analysis in order to provide a provisional human health reference value for this compound.

Based on the structure activity relationship, the health-based level for a one-in-a-million risk level for TBP should be the same as that for 2,4,6-trichlorophenol (*i.e.*, 0.003 mg/L assuming exposure of drinking 2.0 liters per day for a 70-year exposure period). The health-based level of 0.003 mg/L can be considered a bounding estimate which could overestimate the exposure in an actual population. TCLP leaching data presented in the Industry Study Background Document show concentrations of 760 and 16 mg/L of TBP in leachate extracts from the off-specification product and the filter cartridges, respectively.

Since the leachate levels exceed the health-based levels for this wastestream, the Agency conducted an analysis of the potential risk from unlined landfill disposal. For this analysis, the Agency selected what are perhaps conservative dilution factors and exposure assumptions. Using a dilution and attenuation factor of 100 from the Toxicity Characteristic rule (55 FR 11798, March 29, 1990) to simulate the subsurface dilution of the leachate concentration between an unlined landfill and a hypothetical receptor well, the estimated TBP concentrations in groundwater are 7.6 and 0.16 mg/L, respectively. Assuming that people drinking from this hypothetical well are exposed to the contaminant by drinking 1.4 L/day of contaminated water every day over a 30-year interval, the health-based limit of a one-in-a-million increased lifetime risk of cancer is 0.01 mg/L. Thus, the levels of estimated individual risk from exposure to TBP in groundwater are 7×10^{-4} and 2×10^{-5}, respectively.

For this proposed rule, the Agency did not conduct a more sophisticated risk analysis. A more sophisticated risk assessment may suggest different estimated risks than the analysis described above. For example, the dilution factor of 100 was derived assuming that the chemical does not adsorb or degrade in the subsurface environment. The Agency is aware that the fate and transport of TBP in the environment is dependent on the environment in which the waste is disposed. If disposal is to a neutral or slightly acidic environment, the octanol-water coefficient (a constant often related to the soil-water adsorption coefficient) for TBP is relatively high, exceeding 16,000. This value suggests that TBP in landfill leachate may bind to subsurface soils and may migrate at low concentrations over a very long period of time in some environments. On the other hand, disposal under alkaline conditions, which are present in areas where organobromines are produced, would likely result in less sorption to subsurface soils. This suggests that TBP could become more mobile under these conditions. In addition, the dilution factor of 100 in the analysis used corresponds to the dilution factor expected at a drinking water well 500 feet downgradient from the disposal location. The Agency does not know the distance between landfills or disposal areas that could receive TBP wastes and the nearby downgradient drinking water wells or intercept surface waters. Depending on the distance to the nearest well or environmental receptor, the actual human health and environmental risks could be substantially greater than or less than those estimated in the analysis employed in this proposal.

A more sophisticated analysis would also consider other potential exposure pathways in addition to consumption of contaminated groundwater. For example, since TBP under some soil pH's is likely to bind strongly to particulates such as soil, the Agency is concerned that disposal of these wastes could result in soil contamination around the disposal site and human health and environmental risks. The concentration of 2,4,6 TBP in the floor sweepings was very high (up to 400,000 ppm) in the two samples the Agency measured. Since the wastes are in dry, powdery form, they could be dispersed around the disposal facility. Depending on the disposal rate and the likelihood of exposure, exposure to particulates at the disposal site could pose human health and environmental risks at levels of concern.

The Agency requests comment on the risk analysis used in this proposal and plausible mismanagement practices of TBP wastes. EPA requests comment on the issues raised above and on all aspects of the risk analysis employed. In particular, the Agency requests comment on the use of the DAF of 100 for this specific analysis.

Disposal in a Subtitle D landfill is the most plausible mismanagement scenario, given the lower cost for disposal at such sites. The model previously discussed assumes that the Subtitle D facility is unlined. Because the concentrations of TBP at a receptor well could exceed health-based levels, the Agency is proposing to list the solids from the production of tribromophenol as hazardous wastes.

The Agency is seeking comment on the risk levels used in this risk assessment. In the Superfund program, EPA makes clean up decisions using concentration levels that represent excess upper bound lifetime cancer risk to an individual of between 10^{-4} to 10^{-6}. However, the 10^{-6} risk level is the point of departure for determining remediation goals.

Based on the analysis used, EPA is proposing to add tribromophenol to the list of 40 CFR Part 261 Appendix VIII toxic hazardous constituents based on its structural activity relationship with 2,4,6-trichlorophenol and the potential exposure as described above. The Agency also is proposing to add tribromophenol to the list of commercial chemical products (40 CFR 261.33) that are hazardous wastes if discarded or spilled. The wastes specifically proposed for listing are:

K140—Waste solids and filter cartridges from the production of 2,4,6-tribromophenol.

U408—2,4,6-Tribromophenol.

EPA will evaluate carefully all public comments and information received in response to this notice, particularly data which tend to support or refute a finding of risk to human health and the environment from TBP wastes. Based on the comments received, the Agency may finalize or re-evaluate today's proposed listing.

ii. Wastewaters. Data available to the Agency suggests that tribromophenol is produced only at the part of the one major facility in which the wastewaters are injected into non-hazardous deep wells. As off-site management of these wastewaters is probably economically prohibitive, the Agency assumed for the plausible mismanagement scenario that the plant would continue the use of underground injection. In order to estimate risk, EPA had to estimate the length of time injection would continue. The Agency assumed that the plant would inject these wastewaters for up to 60 years, at which point the production of tribromophenol could end because the supply of raw material could run out. Because of the large volume of wastewater generated by this process, the Agency used more sophisticated modelling than for the lower volume wastes. Modelling of the risk due to the management of the wastewaters from TBP production in underground injection was based on the use of three linked submodels. The overall model included:

(1) A submodel which simulates the subsurface lateral migration of TBP from the injection wells to nearby abandoned oil wells penetrating the injection horizons.

(2) A second submodel which simulates the vertical migration of TBP from the injection horizon upward to the drinking water aquifer; and

(3) Finally, a submodel which predicts the lateral spreading of the chemical from the abandoned oil well in the drinking water aquifer and exposure to vertically averaged concentrations present in drinking water wells within the aquifer.

It was assumed that the abandoned wells are filled with compacted sand. Results of the simulated runs are presented in the background document in terms of concentrations as a function of time for various exposure distances. The initial concentration of tribromophenol in the injected wastewater was measured in record sampling to be 7 mg/L and the health-based level (based on a 10^{-6} risk level) was assumed to be 0.01 mg/L (using the same high end exposure assumptions described above for tribromophenol solids). The modeling results showed that the health-based level (based on a 10^{-6} risk) would be exceeded in the upper aquifer after 60 years (the amount of time the injection is expected to continue) at very short distances (less than 10 feet) from a leaking, abandoned, and plugged (i.e., filled with sand) oil well. The results also indicated that the plume of contamination would migrate through the aquifer, away from the plugged oil well, and slowly dissipate over time. Therefore, this plume of contamination could result in exposure to TBP over the health-based level beyond a short distance from the abandoned oil well, if a drinking water well is drilled downgradient from that abandoned oil well. However, this exposure would probably be limited because of the relatively small size of the area in the migrating contaminated plume where TBP is above 0.01 mg/L.

The Agency has also sampled drinking water wells at the plant site and at a private facility 1.3 miles distant. No tribromophenol was found at a detection level of 0.001 mg/L. The plant has been producing TBP since 1976. The absence of TBP in groundwater at present, however, does not completely preclude its presence at a future date. Considering that TBP was not detected in the aquifer and that the model predicted only limited exposure to TBP above the health-based number, the Agency is proposing not to list this wastestream because of relatively low risk to human health.

However, the Agency recognizes that the modeling results described above are dependent on numerous assumptions, including the injection timeframe (i.e., 60 years) and the number and characteristics of the abandoned oil wells. Modifying certain of these assumptions could significantly change the results of this analysis. For example, if the Agency assumes that the abandoned oil well is unfilled, underground injection of this wastewater could result in a contamination plume (with TBP levels above the health-based level) of up to 4000 feet from the well over 60 years and even further away as the plume continues to migrate after 60 years. Also, depending on the exact location of the drinking water well relative to the plume centerline, a person drinking from that well could be exposed to a high concentration of TBP (up to around 5 mg/L) for many years as the contaminated plume moves by.

Therefore, the Agency solicits comment on the assumptions used in this modeling, particularly whether or not some of them should be changed to more accurately predict the risk resulting from the undergound injection of these wastewaters. The Agency specifically requests comment on the following assumptions that are particularly important in this analysis:

(1) Should the timeframe for injection of the tribromophenol wastewaters be extended beyond 60 years?

(2) The model assumed that only one abandoned well would be open to flow. Should the Agency consider the potential for more abandoned wells coming in contact with the spreading plume?

(3) Should the Agency assume the abandoned well(s) are plugged or unplugged?

Several other assumptions (used in the modelling employed by the Agency), individually or in combination, could lead to an overestimation of actual risk and the Agency is requesting comment on them. They are:

(1) The Agency assumed that a break occurs in an abandoned well shaft inside the Sparta aquifer. What are the chances that no breaks have occurred or will occur in the aquifer in any of the many abandoned wells in the area?

(2) The drinking water well was assumed to be drilled in the proximity of an abandoned oil well. Is this a valid assumption?

(3) The model assumed an average concentration of tribromophenol in the Sparta aquifer. If the well tapping the drinking water is nearer to the top of the aquifer, as it most likely would be, would this make a significant difference in the risk level calculated?

(4) The Agency assumed that injection of wastewaters and pumping from Sparta at the site occurs during the same time frame. Should the Agency consider the pumping from Sparta will continue to occur after injection of wastewater ceases, which could affect the modelling calculation?

Finally, the Agency requests comment on whether or not these tribromophenol wastewaters should be listed as hazardous waste based on modifications to EPA's analysis or on any additional data indicating groundwater contamination from the underground injection of these wastes.

Although today's proposed listing determination models potential contamination to a drinking water source, it is not a finding under Section 144.12 of the UIC regulations. Those regulations prohibit endangerment of underground sources of drinking water (USDWs) as defined under the UIC program. A well which fails to meet this requirement must be denied a permit or placed under an enforcement action. The threshold for a determination of compliance with Section 144.12 is different from the threshold for listing a waste as hazardous under RCRA. The test for compliance under the UIC program is whether the well may cause the movement of any contaminant into a USDW in a manner that may cause a

violation of a primary drinking water regulation, or may otherwise adversely affect the health of persons.

2. Conclusions

The Agency is proposing to list as hazardous waste solids and spent filters from the production of 2,4,6-tribromophenol (K140) and the off-specification and discarded product (U408) based on their projected toxicities from structural activity studies, and potential exposure to these chemicals. EPA's decision to propose these additional hazardous waste listings represents a determination by the Agency that the wastes identified meet the criteria for listing as hazardous wastes presented in 40 CFR 261.11. Specifically, based on available evidence, the Agency concludes that 2,4,6-tribromophenol is similar in toxicity to its chlorinated analogue. EPA is proposing that these wastes from organobromines production be listed as hazardous and subject to the requirements of 40 CFR parts 124, 262–266, 268, 270, and 271 since they are capable of posing a threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise handled.

Based on the data collected by the Agency during the recent organobromines industry study and the unique conditions of the industry regarding limitations to future expansion, EPA believes there is justification for a no-list determination for wastes generated from the production of most of the other organobromine chemicals identified in the consent decree (*i.e.*, bromochloromethane, ethyl bromide, octabromodiphenyl oxide and decabromodiphenyl oxide) and for the wastewaters from tribromophenol production. After considering the collected information and data from toxicological, chemical, hydrogeological, and engineering viewpoints, EPA has concluded that the disposal of any wastes from these processes that are not currently listed in 40 CFR part 261, subpart D do not pose a substantial present or future risk to human health and the environment. Therefore, at this time, EPA is proposing not to list as hazardous wastes any additional wastes generated from the production of these chemicals. The Agency reserves the right to revisit these listing determinations if additional relevant data become available. In addition, the Agency is deferring action on the solids waste stream from the production of tetrabromobisphenol-A.

III. Waste Minimization Opportunities in the Industry

During the industry study, the Agency identified two potential opportunities for waste minimization. The first involves the recovery of tribromophenol in the tetrabromobisphenol-A and tribromophenol process. Commercial bisphenol A is made by condensation of phenol and acetone and, hence, the feedstock contains some unreacted phenol. Record sampling of one wastewater stream that leaves the process hot revealed that it contained up to 15,000 mg/L of tribromophenol. A second unrelated wastewater stream from the production of tribromophenol also contains about 70 ppm. This chemical has a solubility of 70 parts per million at 25°C. From the volumes of wastewater generated, the Agency believes that enough material potentially could be recovered to increase annual production of tribromophenol by up to 70%. Cooling and filtering of this wastewater prior to deep well disposal might recover phenolics, limit the quantity of brominated chemicals being disposed, and reduce the plant's overall requirements for purchased phenol. Brominated phenol recovery also could make recycling some process wastewater viable, particularly in the tribromophenol process where the wastewater containing chiefly this material is disposed of by deep well injection.

The second area where savings could be achieved is in product packaging. Materials spilled in the packaging areas are drummed and shipped to Subtitle C facilities. Presently, the two major manufacturers of organobromine chemicals generate over 300 tons per year of various spilled solid products. Recovery of this material could result in significant savings and benefit the environment. The Agency invites comment on both waste minimization options.

IV. Regulatory Impact Analysis and Compliance Costs

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires that a regulatory agency determine whether a new regulation will have "significant regulatory action" and, if so, that a cost-benefit analysis be conducted. This analysis is a quantification of the potential benefits, costs, and economic impacts of a rule. A significant regulatory action is defined as a regulation that has an annual cost to the economy of $100 million or more that adversely affects 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; creates a serious inconsistency with actions taken or planned by another agency; materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency estimated the costs of today's proposed rule to determine if it is a significant regulation as defined by Executive Order 12866. Today's proposed rule is estimated to have an annualized incremental cost of less than $100,000. Based on this compliance cost estimate, today's proposed rule is not considered to be a significant regulatory action. This section of the preamble discusses the results of the analyses of the proposed rule.

Approach

To estimate the costs, economic impacts, and benefits of today's proposed rule, the Agency compared post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions. Benefits are addressed in the risk assessment section of this preamble. The baseline management practices for this waste is disposal in a Subtitle D landfill.

Results

Due to the extremely small universe of facilities potentially affected by this rule, the number of facilities actually affected is insignificant. The requirements promulgated by this proposed rule are estimated to cost industry less than $100,000 per year assuming disposal in a Subtitle C landfill.

The economic impact analysis estimates that none of the affected facilities would be significantly affected by the proposed rule. Compliance with this proposed rule is estimated to increase operating expenses at affected facilities by significantly less than one percent. None of the affected facilities is expected to close as a result of the rule.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a notice of rulemaking, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (*i.e.*, small businesses,

small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the rule is estimated not to have a significant economic effect on a substantial number of small entities.

According to EPA's guidelines for conducting an RFA, if over 20 percent of the population of small entities is likely to experience financial distress based on the costs of the rule, then the Agency considers that the rule will have a significant impact on a substantial number of small entities, and must perform an RFA. EPA evaluated the economic effect of the proposed rule, as required by the Regulatory Flexibility Act, and determined that no facilities would be significantly affected. The Administrator certifies that part 268 and part 148 will not have significant economic effects on a substantial number of small entities. As a result of this finding, the Agency has not prepared a formal RFA.

C. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements in this proposal were promulgated in previous land disposal restriction rulemakings and have been approved by the Office of Management and Budget. Since there are no new information collection requirements being proposed today, an Information Collection Request has not been prepared. However, facilities will have to comply with existing Subtitle C recordkeeping and reporting requirements for newly listed wastestreams if today's proposals are finalized.

VI. State Program Implementation

A. Applicability of Rules in States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce RCRA programs within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under Sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its authorized hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more-stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under Section 3006(g) of RCRA (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State modifies its program to reflect the Federal standards, and applies for and is granted authorization. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's proposal for listing EPA Hazardous Waste Nos. K140 and U408 is being proposed pursuant to Section 3001(e)(2) of RCRA, a provision added by HSWA. When the final rules are promulgated, EPA will consider its HSWA obligation to make a determination regarding listing organobromine wastes to be fulfilled. Therefore, the Agency is proposing to add these requirements to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for final authorization for the HSWA provisions identified in 40 CFR 271.1(j) Table 1, as discussed in the following section of the preamble.

B. Effect on State Authorizations

As noted previously, today's rule is being proposed pursuant to provisions added by HSWA. The addition of K140 to the list of hazardous wastes from specific sources and the addition of U408 to the list of commercial chemical products that are hazardous when discarded is proposed pursuant to Section 3001(e)(2) of RCRA, a provision added by the HSWA.

As noted above, EPA will implement the HSWA portions of today's rule (*i.e.*, the addition of K140 to the list of hazardous wastes from specific sources and the addition of U408 to the list of commercial chemical products that are hazardous when discarded) in authorized States until they modify their programs to adopt these rules and such modifications are approved by EPA. Because this rule will be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final RCRA authorization under Section 3006 (b) and (g) on the basis that State regulations are substantially equivalent or fully equivalent to EPA's regulations. The procedures and schedule for State programs modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire on January 1, 2003 (see 40 CFR 271.24(c)), 52 FR 60129, December 18, 1992.

It should be noted that 40 CFR 271.21(e) requires that States having final RCRA authorization must modify their programs to reflect Federal program changes and subsequently must submit the modifications to EPA for approval. The deadline by which States must modify their programs to adopt today's proposed rule will be determined by the date of promulgation of the final rule in accordance with 40 CFR 271.21(e)(2). Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those proposed in today's rule. Such State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, these State regulations will not be deemed as RCRA requirements until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce those regulations as a matter of State law. In addition, in implementing the Federal program, EPA will work with the States under cooperative agreements to minimize duplication of efforts; in many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of EPA's regulations are not required to include regulations equivalent to the EPA regulations in their application. However, States must modify their programs by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The requirements States must meet when submitting final authorization

applications are set forth in 40 CFR 271.3.

VII. CERCLA Designation and RQ Adjustment

All hazardous wastes listed in 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), pursuant to CERCLA Section 101(14) 42 U.S.C. 9601 (14)(c). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). Therefore, in addition to the K140 listing being proposed today for 40 CFR 261.32 and the U408 listing being proposed for 40 CFR 261.33, entries for K140 and U408 also are being proposed for Table 302.4 of 40 CFR 302.4.

Reporting Requirements. Under CERCLA Section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center of the release (see 40 CFR part 302).[1] In addition to this reporting requirement under CERCLA, Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11004, requires owners or operators of certain facilities to report the release of a CERCLA hazardous substance to State and local authorities. EPCRA Section 304 notification must be given immediately after the release of an RQ or more to the community emergency coordinator of the local emergency planning committee for each area likely to be affected by the release, and to the State emergency planning commission of any State likely to be affected by the release.

Adjustment of RQs. Under Section 102(b) of CERCLA, all hazardous wastes newly designated under CERCLA will have a statutory RQ of one pound unless and until adjusted by regulation. The Agency's methodology for adjusting RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance.[2] The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. Generally, for each intrinsic property, the Agency ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ of 1, 10, 100, 1000, or 5000 pounds. The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria) is generally raised one level.[3] This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased as a result of BHP.

The methodology summarized above is applied to adjust the RQs of individual hazardous substances. An additional process applies to RCRA listed wastes, which contain individual hazardous substances as constituents. As the Agency has stated (54 FR 33440, August 14, 1989), to assign an RQ to a RCRA waste, the Agency determines the RQ for each constituent of the waste and then assigns the lowest of these constituent RQs to the waste itself.

Proposed Adjusted RQs for U408 and K140. Waste U408 is 2,4,6-tribromophenol, an individual hazardous substance. It has been evaluated for four of the six primary RQ adjustment criteria—aquatic toxicity, mammalian toxicity, ignitability, and reactivity—and the secondary adjustment criteria (BHP). Based on this evaluation, the Agency today is proposing an adjusted RQ of 100 pounds for 2,4,6-tribromophenol.

The Agency's evaluations of 2,4,6-tribromophenol for the other two primary RQ adjustment criteria (chronic toxicity and potential carcinogenicity) are not yet complete. If, when completed, these evaluations result in an RQ lower than the 100-pound RQ proposed today, the Agency will repropose the RQ for 2,4,6-tribromophenol at the lower level.

The other waste, K140, is a waste stream with only one hazardous constituent—2,4,6-tribromophenol. Therefore, in accordance with the RQ adjustment methodology described above, an adjusted RQ of 100 pounds is being proposed today for K140. Because the RQ for K140 is based on the RQ for 2,4,6-tribromophenol, any reproposal of the 2,4,6-tribromophenol RQ required by further evaluation will be accompanied by a corresponding reproposal of the RQ for K140.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601–612), whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations and small governmental jurisdictions). No RFA is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

Since EPA has determined the hazardous wastes proposed for listing here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency believes that small entities will not generate them in significant quantities, this regulation, therefore, does not require a RFA. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

[1] The toll free telephone number of the National Response Center is 800–424–8802; in the Washington, DC metropolitan area, the number is 202–267–2675.

[2] For more detailed information on this methodology, see the preamble to an RQ adjustment final rule published on August 14, 1989 (54 FR 33426). A different methodology is used to assign adjusted RQs to radionuclides (see 54 FR 22524, May 24, 1989).

[3] No RQ level increase based on BHP occurs if the primary criteria RQ is already at its highest possible level (100 pounds for potential carcinogens and 5000 pounds for all other types of hazardous substances except radionuclides). BHP is not applied to radionuclides.

IX. Compliance and Implementation

A. Section 3010 Notification

Generally, when new hazardous wastes are listed, all persons who generate, transport, treat, store, or dispose the newly listed wastes(s) are required to notify either EPA, or a State authorized by EPA to operate the hazardous waste program, of their activities pursuant to Section 3010 of RCRA. However, under the Solid Waste Disposal Amendments of 1980 (Pub. L. 96–482), EPA was given the option of waiving the notification requirement for persons who handle wastes that are covered by today's proposed listing and already have notified EPA that they manage other hazardous wastes and have received an EPA identification number. This waiver is being proposed because of the likelihood that persons managing today's proposed wastes already are managing one or more hazardous wastes that generally are associated with the generation of proposed EPA Hazardous Waste Nos. K140 and U408 and, therefore, have previously notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes these wastes and has not previously notified and received an identification number, that person must obtain an identification number pursuant to 40 CFR 262.12 before that person can generate, transport, treat, store, or dispose of these wastes.

B. Compliance Dates for Facilities

Today's proposed listings will be promulgated pursuant to HSWA. HSWA requirements are applicable in authorized States at the same time as in unauthorized States. Therefore, EPA will regulate the wastes being proposed today until States are authorized to regulate these wastes. Once these regulations are promulgated in a final rule by EPA, the Agency will apply these Federal regulations to these wastes and to their management in both authorized and unauthorized States.

Newly-regulated facilities (*i.e.*, facilities at which the only hazardous wastes that are managed are today's proposed wastes in units subject to permit requirements when these listings are finalized) must qualify for interim status within six months of publication of the rule in order to continue managing these wastes in such units. To retain interim status, a newly-regulated land disposal facility must submit a part B permit application within eighteen months after publication of the rule and certify that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements (see RCRA Section 3005(e)(3)).

Interim status facilities that manage today's proposed wastes after these listings are promulgated, must file an amended Part A permit application within six months of publication of the final rule if they are to continue managing these wastes in units that require a permit. The facilities must file the necessary amendments by the effective date of the rule, or they will not retain interim status with respect to today's proposed wastes.

Currently permitted facilities that manage today's proposed wastes after their listings are finalized by EPA must request permit modifications if they are to continue management of these wastes in units that require a permit. Since EPA initially will be responsible for processing these permit modifications, the new Federal procedures for permit modifications will be followed (see 53 FR 37934, September 28, 1988). These new procedures contain a specific provision for newly listed or identified wastes (see 40 CFR 270.42(g)). This provision generally requires that a permitted facility that is "in existence" for the newly listed or identified waste on the effective date of the waste listing must submit a Class 1 modification by that date. Essentially, this modification notifies the Agency and the public that the facility is handling the waste and identifies the units involved. By submitting this notice, the facility temporarily is allowed to continue management of the newly-listed wastes until the Agency can make a final change to the permit. Next, within 180 days of the effective date the permittee must submit a more detailed permit modification request (*i.e.*, a Class 2 or 3 modification). This information will be used by the Agency to develop a final permit change. For more information on permit modifications see the September 28, 1988 preamble discussion referenced above.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous wastes, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 271

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

40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-To-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: April 29, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

Part 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In § 261.32 the table is amended by adding in numerical order the waste stream entry "K140" under the subgroup heading "Organic chemicals:" to read as follows:

§ 261.32 Hazardous wastes from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
K140	Waste solids and filter cartridges from the production of 2,4,6-tribromophenol.	(T)
*	*	*

3. In § 261.33(f) the table is amended by adding in numerical order the entry "U408" to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *

(f) * * *

Hazardous waste No.	Chemical abstracts No.	Substance
*	*	*
U408	118–79–6	2,4,6-Tribromophenol.
*	*	*

4. Appendix VII to part 261 is amended by adding the following waste stream in alphanumeric order to read as follows:

APPENDIX VII.—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazardous waste No.	Hazardous constituents for which listed
*	*
K140	2,4,6-Tribromophenol.

APPENDIX VII.—BASIS FOR LISTING HAZARDOUS WASTE—Continued

EPA hazardous waste No.	Hazardous constituents for which listed
*	*

5. Appendix VIII to part 261 is amended by adding the following hazardous constituent in alphabetical order:

APPENDIX VIII TO PART 261.—HAZARDOUS CONSTITUENTS

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
*	*	*	*
2,4,6-Tribromophenol	Tribromophenol, 2,4,6	118–79–6	U408
*	*	*	*

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

6. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

7. Section 271.1(j) is amended by adding the following entry to table 1 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Title of regulation	FEDERAL REGISTER reference	Effective date
*	*	*	*
[Insert date of publication of final rule in FEDERAL REGISTER].	Listing of Organobromine Production Wastes.	[Insert FEDERAL REGISTER reference to final rule].	[Insert date 180 days after date of publication of final rule in the FEDERAL REGISTER.]
*	*	*	*

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

6. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

7. Section 302.4 is proposed to be amended by adding entries for "K140" and "U408" to table 302.4 to read as follows. The appropriate footnotes to Table 302.4 are republished without change.

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
K140 Waste solids and filter cartridges from the production of 2, 4, 6-tribromophenol.		.....	1*	4	K140	B	100 (45.4)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
* * *		*		*		*	*
U408 2, 4, 6,-Tribromophenol	118796		1*	4	U408	B	100 (45.4)

†—Indicates the statutory source as defined by 1, 2, 3, and 4 below.

* * * * *

4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
1*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.
#—The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

8. Appendix A to § 302.4 is amended by adding an entry in numerical order to read as follows:

Appendix A to § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
* * * * *	
118796	2,4,6–Tribromophenol.

Appendix A to § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
* * * * *	

[FR Doc. 94–11189 Filed 5–10–94; 8:45 am]
BILLING CODE 6560–50–P

federal register

Wednesday
May 11, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public and Indian Housing Youth Sports Program; Funding Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-94-3749; FR-3660-N-01]

Public and Indian Housing Youth Sports Program; Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces HUD's FY 1994 funding of $13,125,000 for the Youth Sports Program (YSP) to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing developments. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, and application processing, including how to apply and how selections will be made

DATES: Application is due by June 20, 1994, at 4:30 pm local time, at the local HUD field office or, in the case of IHAs, in the local HUD Office of Native American Programs, with jurisdiction over the PHA or IHA.

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING YOUTH SPORTS PROGRAM, PUBLIC HOUSING, CONTACT: Robin Prichard, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1197 or 708-3502. A telecommunications device (TDD) for speech and hearing impaired individuals is available at (202) 708-0850. (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING YOUTH SPORTS PROGRAM FOR NATIVE AMERICAN PROGRAMS CONTACT: Dominic Nessi, Director, Office of Native American Programs, Public and Indian Housing, Department of Housing and Urban Development, room 4140, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1015. A telecommunications device (TDD) for speech and hearing impaired individuals is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577-0140.

I. Purpose and Substantive Description

(a) Authority

This program is authorized by section 520 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101-625), as amended by section 126 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992).

(b) Allocation Amounts

Section 126(a) of HCDA (1992) provides that five percent of any amount made available in any fiscal year for the Drug Elimination Program shall be available for Youth Sports Program grants. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, (approved October 28, 1993, Pub. L. 103-124), (94 App. Act) appropriated $265 million for the Drug Elimination Program in FY 1994. This appropriation results in $13,250,000 as the amount set aside for the Youth Sports Program. Of this amount, $125,000 is being used to fund the FY 1993 application of the Greenville Housing Authority, which was not funded in FY 1993 because of a computational error, leaving $13,125,000 as the available amount under this NOFA. Program funds are to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing developments.

Because of the limited amount of funding appropriated for this program, and to ensure that the program is implemented on a broad, nationwide basis, each applicant may submit only one application. The maximum annual Youth Sports grant amount per applicant is $125,000. As more fully explained below, applicants must supplement grant funds with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant.

(c) Eligibility

(1) Eligible Applicants

Funding for this program in FY 1994 is limited to PHAs and IHAs. Although section 520 of NAHA lists seven categories of entities qualified to receive grants (States; units of general local government; local park and recreation districts and agencies; public housing agencies (PHAs); nonprofit organizations providing youth sports services programs; Indian tribes; and Indian housing authorities (IHAs)), and HCDA 1992 section 126(b) added institutions of higher learning that have never participated in a Youth Sports program as eligible applicants, the 94 App. Act limited the funding for the Drug Elimination Program to PHAs and IHAs only. Since the funding of the Youth Sports Program is dependent on the appropriation for the Drug Elimination Program, the limitations that apply to Drug Elimination affect Youth Sports as well. Therefore, for FY 1994 only PHAs and IHAs are eligible applicants for Youth Sports Program Funding.

In designing an activity for funding, PHA and IHA applicants shall consult with RMCs/RCs where they exist, and with other entities that would be eligible for funding under this program, as listed above, with at least two years of experience in designing or operating sports, cultural, recreational, educational or other activities for youth. Eligible local entities that are affiliates of national organizations may rely on the experience of the national organization for this purpose. These consultations will provide applicants with valuable resident input and will involve entities with experience in designing and implementing the eligible types of activities under this program with PHA and IHA applicants that may not have this type of experience. These experienced entities may establish a sub-contracting relationship, in accordance with 24 CFR part 85, with the PHA/IHA if deemed appropriate by the grantee to further their public/private partnership. This consultation process will also provide entities that are not PHAs or IHAs with a greater appreciation and understanding of the operations and problems of public and Indian housing developments. The end result will be more effective program activities that make more efficient use of program funds. This result is expected because it draws upon and combines the expertise of PHA and IHA applicants with respect to the operations and problems of public and Indian housing developments, and the expertise of other entities with respect to designing and implementing youth activities.

(2) Eligible Activities

Youth Sports Program funds may be used to assist in carrying out sports,

cultural, recreational, educational or other activities for youth in any of the following manners:

(i) Acquisition, construction, or rehabilitation of community centers, parks, or playgrounds is an eligible activity under the Youth Sports Program.

(A) Acquisition, construction or rehabilitation costs shall not be approved unless the applicant demonstrates the need for the type of facilities to be assisted by the grant (section III.(a)(3) of this NOFA).

(B) Facilities that receive Youth Sports funding must be used primarily for youth from the public or Indian housing developments in which the funded facility is operated (section III.(a)(2)(ii) and III.(a)(10)(iii) of this NOFA).

(C) Facilities (community centers, parks, or playgrounds) acquired, constructed, or rehabilitated under this program must be on or adjacent to the premises of the public housing development identified in the application for assistance under this program. In the case of Indian Housing Authorities, the applicant must specify how youth from IHA developments will have access to the facility, since IHAs often cover large areas (section III.(a)(9) of this NOFA).

(D) Facilities receiving Youth Sports funding must comply with any applicable local or tribal building requirements for recreational facilities (section III.(a)(2)(iii) of this NOFA).

(E) Facilities receiving Youth Sports funding must be used for Youth Sports activities commensurate with the extent of the Youth Sports funding. For example, if a facility's operation is funded 60 percent by a Youth Sports grant, then it must be used at least 60 percent for Youth Sports activities.

(F) In accordance with the requirements of 24 CFR 8.21, facilities should be designed and constructed to be readily accessible to and usable by individuals with handicaps. Alterations to existing facilities shall, to the maximum extent feasible, make them made readily accessible to and usable by individuals with handicaps.

(G) In accordance with the requirements of 24 CFR 8.20, no qualified applicant with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination in the program.

(ii) Redesigning or modifying public spaces in public or Indian housing developments to provide increased utilization of the areas by Youth Sports activities is an eligible activity under this program.

(A) The construction of sports facilities on public or Indian housing property to implement Youth Sports activities is permitted under this program. These facilities may include, but not be limited to, baseball diamonds, basketball courts, football fields, tutoring centers, swimming pools, soccer fields, public or Indian housing community centers, and tennis courts.

(iii) Provision of public services, including salaries and expenses for staff of youth sports programs, cultural activities, transportation costs, educational programs relating to drug abuse, and sports and recreation equipment are eligible activities under this program.

(A) Educational programs for youth relating to illegal drug use are permitted under this section. The program must be formally organized and provide the knowledge and skills youth need to make informed decisions on the potential and immediate dangers of drug abuse and involvement with illegal drugs. Grantees may contract with drug education professionals to provide the appropriate training or workshops. These educational programs may be part of organized sports activities or other eligible youth activities.

(B) Activities providing an economic/educational orientation for Youth Sports Program participants are eligible for funding as public services. These activities must provide, for public or Indian housing youth, the opportunities for interaction with, or referral to, higher educational or vocational institutions, and develop the skills of program participants to pursue educational, vocational, and economic goals. These activities may also provide public or Indian housing youth the opportunity to interact with private sector businesses in their community with the purpose of promoting the development of educational, vocational, and economic goals in public or Indian housing youth.

(C) The cost of the initial purchase of sports and recreation equipment to be used by program participants is permitted under this program.

(D) Cultural and recreational activities, such as ethnic heritage classes, and art, dance, drama and music appreciation and instruction programs are eligible Youth Sports Program activities.

(E) Youth leadership skills training for program participants is permitted under this program. These activities must provide opportunities designed to involve public and Indian housing youth in peer leadership roles in the implementation of program activities, for example, as team or activity captains, counselors to younger program participants, assistant coaches, and equipment or supplies managers. Grantees may contract with youth trainers to provide services which may include training in peer pressure reversal, resistance or refusal skills, goal planning, parenting skills, and other relevant topics.

(F) Transportation costs directly related to Youth Sports activities (for example, leasing a vehicle to transport a Youth Sports team to a game) are eligible program expenses.

(G) The purchase of vehicles under this program is prohibited.

(H) Liability insurance costs directly related to Youth Sports activities are eligible program expenses.

(3) Threshold Requirements for Funding

Every activity proposed for funding under the Youth Sports Program must satisfy each of the following requirements or it will not be considered for funding:

(i) The activity must be operated as, in conjunction with, or in furtherance of, an organized program or plan designed to eliminate drugs and drug-related problems in the public or Indian housing development or developments for which the activity is proposed. (See, section III.(a)(7), below, of this NOFA.)

(ii) The activity for which funding is sought must be conducted with respect to public or Indian housing sites that HUD determines have a substantial problem regarding the use or sale of illegal drugs.

(A) The determination required in paragraph (ii) will be made on the basis of information submitted in the applicant's plan as described below in "Checklist of Application Submission Requirements," section III.(a)(7).

(iii) The activities or facilities funded by Youth Sports grants must serve primarily youth from the public or Indian housing developments for which the activities or facilities are operated. (See, section III.(a)(10), below.)

(iv) Applicants must provide a workplan detailing a timeline for the implementation of activities and a budget for the activity or activities for which funding is sought, as required by sections III.(a) (4) and (5), below.

(v) Applicants must be able to supplement the amount provided by a grant under the Youth Sports Program with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant. (See section III.(a)(2)(ii),

below.) Funds from non-Federal sources are funds the applicant receives for the Youth Sports activities identified in its application from the following:

(A) States;

(B) Units of general local government or agencies of such governments;

(C) Indian tribes;

(D) Private contributions;

(E) Any salary paid to staff to carry out the Youth Sports activities of the applicant, computed as follows:

(1) Only that portion of staff salaries representing time that will be spent on new and additional duties directly involved with Youth Sports activities may qualify as funds from non-Federal sources;

(2) Staff salaries that are paid with Youth Sports funds do not qualify as funds from non-Federal sources for the purpose of this program;

(F) The value of the time and services contributed by volunteers to carry out the program of the grant recipient to be determined as follows:

(1) Except as set out in paragraph (2), below, the value of time and services contributed by volunteers is to be computed on the basis of five dollars per hour;

(2) Where the volunteer is a professional or a person with special training performing a service directly related to the profession or special training, the value of the service is to be computed on the basis of the usual and customary hourly rate paid for the service in the community where the Youth Sports activity is located;

(G) The value of any donated material, equipment, or building, computed on the basis of the fair market value of the donated item(s) at the time of the donation;

(1) The applicant must document the fair market value of donated items by referencing bills of sale, advertised prices, or appraisals, not more than one year old and taken from the community where the item or the Youth Sports activity is located (whichever is more appropriate), of identical or comparable items;

(H) The value of any lease on a building, or part of a building, computed on the basis of the fair market value of a lease for similar property similarly situated.

(1) The applicant must document the fair market value of a lease by referencing an existing, or no more than one year old, lease from the building involved; or evidence, such as advertisements or appraisals, of the value of leases for comparable buildings.

(vi) Grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program may not be used to replace other public funds previously used, or designated for use, for the purpose of this program. (See, section III.(a)(2)(vi).

(d) Selection Criteria

Each application for a grant award that is submitted in a timely manner to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Native American Programs, and that otherwise meets the requirements of this NOFA, will be evaluated. An application must receive a minimum score of 75 points out of the maximum of 120 points that may be awarded under this competition to be eligible for funding. Grants will be awarded to the three highest-ranked, eligible PHA applications within each of the following 10 groupings of Area and State Offices:

New England, New York, New Jersey, Mid-Atlantic, Southeast, Midwest, Great Plains, Rocky Mountain, Southwest, Northwest/Alaska, Pacific/Hawaii.

In addition, grants will be awarded to the three highest-ranked, eligible IHA applications on a nation-wide basis, subject to the following condition: Of the total grants awarded to IHAs, the Director of ONAP retains the authority to insure that each Field Office of Native American programs receives a minimum of one eligible grant. This means that before an award is made to an IHA from the jurisdiction of a Field ONAP in which an IHA has already received an award, that award may be made to the next highest scoring IHA from the jurisdiction of a Field ONAP in which no IHA has yet received an award.

All of the remaining eligible applications, both PHAs and IHAs, will then be placed in overall nation-wide ranking order, with the remaining funds granted in order of rank, except as discussed above for IHAs, until all funds are awarded. The following criteria will be used to evaluate eligible applications:

(1) The extent to which the Youth Sports activities to be assisted with the grant address the particular needs of the area to be served by the activities and employs methods, approaches, or ideas in the design or implementation of the activities particularly suited to fulfilling the needs (whether such methods are conventional or unique and innovative). (Maximum points: 25). In assessing this criterion, HUD will consider the following factors:

(i) The appropriateness of the applicant's methods, approaches, or ideas in addressing the particular needs of the area to be served by the program, as reflected in the description of the services to be provided by the applicant's proposed Youth Sports Program (section III.(a)(3) of this NOFA); (10 points)

(ii) The resources committed to each activity and service (section III.(a)(5) of this NOFA) proposed for funding in the application; (5 points)

(iii) An estimate of the number of youth from public or Indian housing developments that will be involved in the applicant's proposed activities, in accordance with section III.(a)(8) of this NOFA. (5 points)

(iv) The applicant's explanation of the procedures that will be followed to ensure that the Youth Sports activities will serve primarily youth from the public or Indian housing development in which the program to be assisted by a grant is operated, as required by section III.(a)(10)(iii). (5 points)

(2) The technical merit of the application of the qualified applicant. (Maximum points: 10). In assessing this criterion HUD will consider the following factor:

(i) The quality and thoroughness of the statement required in the application (section III.(a)(6) of this NOFA) regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria for this program. (10 points)

(3) The qualifications, capabilities, and experience of the personnel and staff of the sports program who are critical to achieving the objectives of the program as described in the application. (Maximum points: 15). In assessing this criterion HUD will consider the following factors:

(i) The position descriptions, or if the identity of persons who will fill positions is known, the resumes, of staff critical to achieving the objectives of the applicant's program, required under section III.(a)(10)(ii) of this NOFA; (10 points)

(ii) The nature of the duties volunteers will perform, required under section III.(a)(10)(ii) of this NOFA. (5 points)

(4) The capabilities, related experience, facilities, and techniques of the applicant for carrying out its youth sports program and achieving the objectives of its program as described in the application, and the potential of the applicant for continuing the youth sports program. (Maximum points: 30) In assessing this criterion HUD will consider the following factors:

(i) The related experience of the applicant, as evidenced by its staff, and of the entity consulted by the applicant in preparing its application, in

conducting the type of activities, in public or Indian housing, for which funding is requested (section III.(a)(10)(i) and (ii) of this NOFA); (10 points)

(ii) The appropriateness, in terms of need, size, location, and suitability, of the facilities to be used for youth activities (section III.(a)(9) of this NOFA); (5 points)

(iii) The applicant's workplan and implementation schedule for the Youth Sports activities for which funding is sought (section III.(a)(4) of this NOFA); (10 points)

(iv) The extent of the resources committed to continue the operation of Youth Sports activities and facilities beyond the grant term included in the applicant's description of plans to continue the Youth Sports activities in the future, as required in section III.(a)(12) of this NOFA. (5 points)

(5) The severity of the drug problem at the local public or Indian housing site for the youth sports program and the extent of any planned or actual efforts to rid the site of the problem. (Maximum points: 10) In assessing this criterion HUD will consider the following factors:

(i) The extent of the drug-related problems at the housing developments to be assisted, as established in the applicant's plan required by section III.(a)(7) of this NOFA; (5 points)

(ii) The extent of any planned or actual efforts to rid the housing developments to be assisted of their drug-related problem, as described in the applicant's plan required by section III.(a)(7) of this NOFA. (5 points)

(6) The extent to which local sports organizations or sports figures are involved. (Maximum points: 5 points) In assessing this criterion, HUD will consider the following factor:

(i) The documentation provided in the application of the level of on-site or other participation by local sports, cultural, recreational, educational, or other community organizations or figures that is focused on the specific youth activities for which the application is prepared (section III.(a)(11) of this NOFA). (5 points)

(7) The extent of the coordination of proposed activities with local resident management groups or resident associations (where such groups exist) and coordination of proposed activities with ongoing programs of the applicant that further the purposes of the Youth Sports program. (Maximum points: 15) In assessing this criterion, HUD will consider the following factors:

(i) The applicant's description of its consultations with resident management groups or resident associations, where they exist, and residents, as required by section III.(a)(7) of this NOFA; (10 points)

(ii) The extent to which the applicant demonstrates the relationship of the Youth Sports activities with other existing anti-drug activities, if any, in the housing developments to be assisted as reflected in the applicant's plan required by section III.(a)(7) of this NOFA. (5 points)

(8) The extent of non-Federal contributions that exceed the fifty percent amount of such funds required. (Maximum points: 5) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's budget describing the share of the costs of the applicant's Youth Sports Program provided by a grant under this program and the share of the costs provided from funds from non-federal sources and other resources, such as the number of volunteers and volunteer hours committed, submitted in accordance with section III.(a)(5) of this NOFA. (5 points)

(9) The extent to which the applicant demonstrates local government or tribal support for the program. (Maximum points: 5) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's description of local or tribal government support as evidenced by contributions from these entities listed under section III.(a)(5) of this NOFA. (5 points)

(e) Environmental Review

Before making an award of grant funds under this part, HUD will perform an environmental review to the extent required under the provisions of NEPA, applicable related authorities at 24 CFR 50.4, and HUD's implementing regulations at 24 CFR part 50.

II. Application Process

(a) An application package may be obtained from the local HUD field office or by calling HUD's Drug Information and Strategy Clearinghouse at 1–800–578–3472. The application package contains information on all exhibits and certifications required under this NOFA.

(b) The deadline for the submission of grant applications under this NOFA is June 20, 1994. In order to be eligible, the original and two copies of the application must be physically received by 4:30 p.m., local time, on the deadline date at the local HUD field office or, in the case of IHAs, in the local HUD Office of Indian Programs, with jurisdiction over the PHA or IHA, Attention: Public Housing Division Director, or Office of Indian Programs Director. A list of these offices is included as Appendix 1 to this NOFA. This application deadline is 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 deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. A Fax is not acceptable.

III. Checklist of Application Submission Requirements

(a) Each application for a grant under this program must include the following:

(1) Standard Grant Application Forms SF–424 and SF–424A with narrative showing breakdown by program and cost, to include all equipment.

(2) The following certifications, executed by the CEO of the applicant:

(i) A certification that the applicant will supplement the amount provided by a grant under this program with an amount of funds from non-federal sources equal to or greater than 50 percent of the amount provided by the grant;

(ii) A certification that the activities or facilities funded by the Youth Sports grant will serve primarily youth from the public or Indian housing developments in which the activities or facilities are operated;

(iii) A certification that facilities receiving Youth Sports funding comply with any applicable local or tribal building requirements for recreational facilities;

(iv) A certification that the applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.);

(v) A certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in 24 CFR part 87 (This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and 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.);

(vi) A certification that grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program will not be used to replace

other public funds previously used, or designated for use, for the purpose of this program.

(vii) A certification that the applicant has assessed its potential liability arising out of Youth Sports activities, has considered any limitations on liability under State, local or tribal law, and that, upon being notified of a Youth Sports grant award, the applicant will obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this program.

(viii) *Civil Rights.* A certification from the applicant that:

(A) It will comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and with HUD regulations at 24 CFR part 1, which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structures which are provided or improved with the aid of federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structures are used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits;

(B) It will comply with the Fair Housing Act (42 U.S.C. 3601–3620) and with implementing regulations at 24 CFR part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and will administer its programs and activities relating to housing in a manner affirmatively to further fair housing;

(C) It will comply with Executive order 11063 on Equal Opportunity in Housing and with implementing regulations at 24 CFR part 107, which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with federal financial assistance;

(D) It will comply with Executive order 11246 and its implementing regulations at 42 CFR chapter 60–1, which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal contracts, and that affected persons shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in 24 CFR 130.5, the equal opportunity clause required by § 130.15(b);

(E) It will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701a), and with implementing regulations at 24 CFR part 135, which require that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the development and contracts for work in connection with the project be awarded in substantial part to persons residing in the area of the development;

(F) It will comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and with implementing regulations at 24 CFR part 8, which prohibit discrimination based on handicap in federally assisted and conducted programs and activities;

(G) It will comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146, which prohibit discrimination against persons because of age in projects and activities receiving federal financial assistance;

(H) It will comply with Executive orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and by women;

(I) It will comply with Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and with implementing regulations at 28 CFR part 35, which prohibit discrimination on the basis of disability by public entities.

(3) A description of the nature of the services to be provided by the applicant's proposed Youth Sports Program, including an explanation of the way in which the activities or facilities proposed for funding address the particular needs of the area to be served by the program.

(4) A workplan with an 18 months maximum task timeline providing an implementation schedule for the Youth Sports activities.

(5) A budget describing the financial and other resources committed to each activity and service of the program. The budget must identify the share of the costs of the applicant's Youth Sports activities provided by a grant under this program and provide a narrative describing how the share of the costs provided from other sources of funds (e.g. local or tribal government, corporations, individuals), including funds from non-Federal sources, will be obtained.

(6) A statement regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria in section I.(d), above.

(7) A plan designed to eliminate drugs and drug-related problems on the premises of the housing developments proposed for funding. Applicants are given a choice to satisfy this requirement in one of two ways. First, an applicant may submit a current-year plan prepared for the housing developments in accordance with 24 CFR 961.15 as a part of a Drug Elimination Program grant. In this case, the applicant must indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in furtherance of the § 961.15 plan. The other choice is that an applicant may submit an abbreviated plan prepared for this NOFA as follows:

(i) The plan must describe the drug-related problems in the developments that are proposed for funding under this program, using:

(A) Objective data, if available, from the local police precinct or the PHA's or IHA's records on the types, number and sources of drug-related crime in the developments proposed for assistance. If crime statistics are not available at the development or precinct level, the applicant may use other reliable, objective data including those derived from the records of Resident Management Corporations (RMCs), Resident Corporations (RCs), or other resident associations. The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years.

(B) Information from other sources which has a direct bearing on drug-related problems in the developments proposed for assistance. Examples of these data are: Resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police.

(ii) The plan must include a narrative discussion of the applicant's current activities, if any, to eliminate drug-related problems in the targeted developments. Any efforts being undertaken by community and governmental entities, residents of the development, Resident Management Corporations (RMCs), Resident Corporations (RCs), other resident associations, or any other entities to

address the drug-related problems in the developments proposed for assistance must be described. The applicant must also indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in furtherance of the other activities described in the plan.

(8) An estimate of the number of youth involved.

(i) The applicant must provide the total estimated number of youth involved for each proposed activity and participating in youth leadership assignments (for example, team managers, assistant managers, team captains) computed on an annual and, if applicable, a session or seasonal basis (for example, classes or league sports may be organized in sessions or seasons that run for a certain number of weeks or months, or more activities may take place and more youth may be involved on weekends than on weekdays).

(ii) The total estimated number given for each activity must be further broken down by categories of age (e.g., 5–8 years old, 9–12 years old, etc.), sex (male, female, co-ed), and residency in public or Indian housing.

(9) A description of the facilities used.

(i) Facilities to be used for Youth Sports activities must be described in the application with regard to their dimensions, location, accessibility to the disabled, and the number of youth that can be accommodated at one time.

(A) In the case of an Indian housing development, if a facility to be acquired, constructed, or rehabilitated is not located on or adjacent to the premises of the development to be assisted, the application must specify how youth from the Indian housing development will have access to the facility (e.g., transportation will be provided, transportation service is readily available).

(ii) Where applicable, the application must provide a detailed explanation of all facility acquisition, construction, rehabilitation, operation, redesign or modification proposed for funding under this program.

(A) The application must specify what percent of the facility will be used for youth activities (as opposed to, for example, senior citizen or adult activities). This percentage may not be less than the percentage of Youth Sports funding provided for the facility.

(iii) The application must identify the entity that will be responsible for the operation of any facility funded by a Youth Sports grant.

(10) A description of the organization of the applicant's proposed Youth Sports program, which must detail:

(i) The consultations entered into by the applicant with RMCs/RCs, where they exist, and other entities experienced in the design and implementation of the type of proposed youth sports activities;

(ii) The position descriptions, or if the identity of persons who will fill positions is known, the resumes, of the staff that will be responsible for managing and operating the Youth Sports activities must be included in the application; if volunteers are involved, their number, job descriptions, and hours per week of involvement must be included;

(iii) The procedures that will be followed to ensure that the Youth Sports activities or facilities will serve primarily youth from the public or Indian housing development in which the program to be assisted by a grant is operated must be explained in the application.

(11) A description of the extent of involvement of local sports organizations or sports figures.

(i) The applicant must provide documentation of the level of on-site or other participation by local and nationally affiliated sports organizations, except as provided in section (ii) below, with at least two years of organizational and operational experience. These may include, but are not limited to, strictly sports organizations, such as, Little Leagues, Midnight Basketball, or professional teams. Participation by cultural, recreational, or educational organizations is also permissible. The participation of these groups must be focused on the youth activities for which the application is prepared.

(ii) The applicant may demonstrate the involvement of local or national sports, cultural, recreational or educational figures, such as athletes, coaches, artists, entertainers and teachers in place of, or in addition to, the participation of organizations. The participation of these figures must be focused on the youth activities for which the application is prepared.

(12) A description of plans and resources to continue the Youth Sports activities beyond the grant term under this program, including the commitment of entities (e.g., local and tribal governments, corporations, community organizations) and individuals to continue their involvement in the applicant's Youth Sports activities and facilities.

(13) HUD Form 2880.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of receipt of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(1) Are not necessary for HUD review under selection criteria/ranking factors; and

(2) Cannot be submitted after the application due date has expired, to improve the substantive quality of the proposal. An example of a technical deficiency would be the failure of an applicant to submit a certification with its proposal.

V. Other Matters

(a) Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The FONSI is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20401. HUD will review all applications and their proposed activities in accordance with the environmental requirements of 24 CFR part 50.

(b) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA implements a program that provides positive sports, cultural, recreational, educational or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program helps PHAs and IHAs to combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States. Further review under the Order is also unnecessary since the NOFA generally tracks the statute and involves little implementing discretion.

(c) Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA implements a program that provides positive sports, cultural, recreational, educational or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program is intended to improve the quality of life of public and Indian housing development residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is also not necessary since the NOFA essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

(d) Section 102 HUD Reform Act

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 of 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, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) 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. (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.

(f) 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). 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.

Any questions regarding the rule should be directed to Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: Sec. 520, National Affordable Housing Act (approved November 28, 1990, Pub. L. 101–625); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 3, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix:

Listing of HUD Category A and B Field Offices, and other Field Offices with delegated public housing responsibilities, and Offices of Native American Programs.

Note: The below information was confirmed by local Field Offices January 30, 1994.

New England

Jurisdictions: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts Office

HUD—Boston Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, room 375, Boston, MA 02222–1092, (617) 565–5234, *TDD Number:* (617) 565–5453, *Office Hours:* 8:30am–5 pm local time.

Hartford, Connecticut Office—Category A Office

Office of the Manager, HUD—Hartford Office, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4522, *TDD Number:* (203) 240–4665, *Office Hours:* 8:00am–4:30pm local time.

Manchester, New Hampshire Office—Category B Office

Office of the Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101–2487, (603) 666–7681, *TDD Number:* (603) 666–7518, *Office Hours:* 8:00am–4:30pm local time.

Providence, Rhode Island Office—Category B Office

Office of the Manager, HUD—Providence Office, 330 John O. Pastore Federal Building, U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1785,

(401) 528–5351, *TDD Number:* (401) 528–5364, *Office Hours:* 8:00 am–4:30 pm local time

New York, New Jersey

Jurisdictions: New York, New Jersey

New York Office

HUD—New York Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500, *TDD Number:* (212) 264–0927, *Office Hours:* 8:30 am–5 pm local time.

Buffalo, New York Office—Category A Office

Office of the Manager, HUD—Buffalo Office, Lafayette Court, 5th floor, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755, *TDD Number:* Number not available, *Office Hours:* 8 am–4:30 pm local time.

Newark, New Jersey Office—Category A Office

Office of the Manager, HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504, (201) 877–1662, *TDD Number:* (201) 645–6649, *Office Hours: 8:30 am–5 pm local time.*

Mid-Atlantic

Jurisdictions: Pennsylvania, Washington DC, Maryland, Delaware, Virginia, West Virginia.

Philadelphia, Pennsylvania Office

Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, *TDD Number:* (215) 597–5564, *Office Hours:* 8 am–4:30 pm local time.

Washington, DC Office—Category A Office

Office of the Manager, HUD—Washington Office, 820 First Street NE., Washington, DC 20002–4502, (202) 275–9200, *TDD Number:* (202) 275–0967, *Office Hours: 8 am–4:30 pm local time.*

Baltimore, Maryland Office—Category A Office

Office the Manager, HUD—Baltimore Office,10 South Howard Street, 5th Floor, Baltimore, Maryland 21201–2505, (401) 962–2520, *TDD Number:* (410) 962–0106, *Office Hours:* 8 am–4:30 pm local time.

Pittsburgh, Pennsylvania Office—Category A Office

Office of the Manager, HUD—Pittsburgh Office, Old Post Office Courthouse Building, 700 Grant Street, Pittsburgh, Pennsylvania 15219–1939, (412) 644–6428, *TDD Number:* (412) 644–5747, *Office Hours:* 8 am–4:30 pm local time.

Richmond, Virginia Office—Category A Office

Office of the Manager, HUD—Richmond Office, The 3600 Center, 3600 West Broad Street, P.O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4507, *TDD Number:* (804) 278–4501, *Office Hours:* 8 am–4:30 pm local time.

Charleston, West Virginia Office—Category B Office

Office of the Manager, HUD—Charleston Office, 405 Capitol Street, suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000, *TDD Number:* (304) 347–5332, *Office hours: 8 am–4:30 pm local time.*

Southeast

Jurisdictions: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee

Atlanta, Georgia Regional Office

HUD—Atlanta Office, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, (404) 331–5136, *TDD Number:* (404) 730–2654, *Office Hours:* 8 am–4:30 pm local time.

Birmingham, Alabama Office—Category A Office

Office of the Manager, HUD—Birmingham Office, 600 Beacon Parkway West, suite 300, Birmingham, Alabama 35209–3144, (205) 290–7617, *TDD Number:* (205) 290–7624, *Office Hours:* 7:45am–4:30 pm local time.

Louisville, Kentucky Office—Category A Office

Office of the Manager, HUD—Louisville Office, 601 West Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251, *TDD Number:* Number not available.

Jackson, Mississippi Office—Category A Office

Office of the Manager, HUD—Jackson Office, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, room 910, Jackson, Mississippi 39269–1096, (601) 965–4773, *TDD Number:* (901) 601–4171, *Office Hours:* 8 am–4:45 pm local time.

Greensboro, North Carolina Office—Category A Office

Office of the Manager, HUD—Greensboro Office, 2306 West Meadowview Road, Greensboro, North Carolina 27407, (919) 547–4000, *TDD Number:* 919–547–4055, *Office Hours:* 8 am–4:45 pm local time.

Puerto Rico Office—Category A Office

Office of the Manager, HUD—Caribbean Office, New San Office Building, 159 Carlos East Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–6121, *TDD Number:* Number not available, *Office Hours:* 8 am–4:30 pm local time.

Columbia, South Carolina Office—Category A Office

Office of the Manager, HUD—Columbia Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592, *TDD Number:* Number not available, *Office Hours:* 8 am–4:45 pm local time.

Knoxville, Tennessee Office—Category A Office

Office of the Manager, HUD—Knoxville Office, John J. Duncan Federal Building, 710 Locust Street, SW., Knoxville, Tennessee 37902–2526, (615) 549–4384, *TDD Number:* (615) 545–4379, *Office Hours:* 7:30 am–4:15 pm local time.

Nashville, Tennessee Office—Category B Office

Office of the Manager, HUD—Nashville Office, 251 Cumberland Bend Drive, suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213, *TDD Number:* (615) 736–2886, *Office Hours:* 7:45 am–4:15 pm local time.

Jacksonville, Florida Office—Category A Office

Office of the Manager, HUD—Jacksonville Office, 301 West Bay Street, suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626, *TDD Number:* (904) 232–1241, *Office Hours:* 7:45 am–4:30 pm local time.

Midwest

Jurisdictions: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Chicago, Illinois Office

Ralph H. Metcalfe Federal Building, HUD—Chicago Office, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353–5680, *TTD Number:* (312) 353–7143, *Office Hours:* 8:15 am–4:45 pm local time.

Chicago, Illinois—Office of Native American Programs

HUD—Chicago Office of Native American Programs, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–4532, *TDD Number:* (312) 353–7143, *Office Hours:* 8:15 am–4:45 pm local time.

Detroit, Michigan Office—Category A Office

Office of the Manager, HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592, (313) 226–7900,*TDD Number:* Number not available, *Office Hours:* 8 am–4:30 pm local time.

Indianapolis, Indiana Office—Category A Office

Office of the Manager, HUD—Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204–2526, (317) 226–6303, *TDD Number:* Number not available, *Office Hours:* 8 am–4:45 pm local time

Grand Rapids, Michigan Office—Category B Office

Office of the Manager, HUD—Grand Rapids Office, 2922 Fuller Avenue, NE., Grand Rapids, Michigan 49505–3499, (616) 456–2100, *TDD Number:* Number not available, *Office Hours:* 8 am–4:45 pm local time.

Minneapolis—St. Paul, Minnesota Office—Category A Office

Office of the Manager, HUD—Minneapolis-St. Paul Office, 220 2nd Street South, Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3000, *TTD Number:* (612) 370–3186, *Office Hours:* 8 am–4:30 pm local time.

Cincinnati, Ohio Office—Category B Office

Office of the Manager, HUD—Cincinnati Office, Federal Office Building, room 9002 550 Main St., Cincinnati, Ohio 45202–3253, (513) 684–2884, *TDD Number:* (513) 684–6180, *Office Hours:* 8 am–4:45 pm local time.

Cleveland, Ohio Office—Category B Office

Office of the Manager, HUD—Cleveland Office, Renaissance Building, 1375 Euclid Avenue, Fifth floor, Cleveland, Ohio 44115–1815, (216) 522–4065, *TTD*

Number: Number not available, *Office Hours:* 8 am–4:40 pm local time.

Columbus, Ohio Office—Category A Office

Office of the Manager,
HUD—Columbus Office,
200 North High Street,
Columbus, Ohio 43215–2499,
(614) 469–5737,
TDD Number: Number not available,
Office Hours: 8:30 am–4:45 pm local time.

Milwaukee, Wisconsin Office—Category A Office

Office of the Manager,
HUD—Milwaukee Office,
Henry S. Reuss Federal Plaza,
310 West Wisconsin Avenue,
suite 1380,
Milwaukee, Wisconsin 53203–2289,
(414) 291–3214,
TDD Number: Number not available,
Office Hours: 8 am–4:30 pm local time.

Southwest

Jurisdictions: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Fort Worth, Texas Office

HUD—Fort Worth Office,
1600 Throckmorton,
P.O. Box 2905,
Fort Worth, Texas 76113–2905,
(817) 885–5401,
TDD Number: (817) 885–5447,
Office Hours: 8 am–4:30 pm local time.

Houston, Texas Office—Category B Office

Office of the Manager,
HUD—Houston Office,
Norfolk Tower,
2211 Norfolk,
suite 200,
Houston, Texas 77098–4096,
(713) 653–3274,
TDD Number: Number not available,
Office Hours: 7:45 am–4:30 pm local time.

San Antonio, Texas Office—Category A Office

Office of the Manager,
HUD—San Antonio Office,
Washington Square,
800 Dolorosa Street,
San Antonio, Texas 78207–4563,
(512) 229–6800,
TDD Number: (512) 229–6885,
Office Hours: 8 am–4:30 pm local time.

Little Rock, Arkansas—Category A Office

Office of the Manager,
HUD—Little Rock Office,
TCBY Tower,
425 West Capitol Avenue,
Little Rock, Arkansas 72201–3488,
(501) 324–5931,
TDD Number: (501) 324–5931,
Office Hours: 8 am–4:30 pm local time.

New Orleans, Louisiana Office—Category A Office

Office of the Manager,
HUD—New Orleans Office,
Fisk Federal Building,
suite 3100,
1661 Canal Street,
New Orleans, Louisiana 70112–2887,
(504) 589–7200,
TDD Number: Number not available,
Office Hours: 8 am–4:30 pm local time.

Oklahoma City, Oklahoma Office—Category A Office

Office of the Manager,
HUD—Oklahoma City Office,
Alfred P. Murrah Federal Building,
200 NW. 5th Street,
Oklahoma City, Oklahoma 73102–3202,
(405) 231–4181,
TDD Number: (405) 231–4891,
Office Hours: 8 am–4:30 pm local time.

Oklahoma City, Oklahoma—Office of Native American Programs

HUD—Oklahoma City Office of Native American Programs,
Alfred. P Murrah Federal Building,
200 NW. 5th Street,
Oklahoma City, OK 73102–3201,
(405) 231–4102,
TDD Number: (405) 231–4891,
Office Hours: 8 am–4:30 pm local time.

Albuquerque, New Mexico Office—Category C Office

Office of the Manager,
HUD—Albuquerque Office,
625 Truman Street NE.,
Albuquerque, NM 87110–6472,
(505) 262–6463,
TDD Number: (505) 262–6463,
Office Hours: 7:45 am–4:30 pm local time.

Great Plains

Jurisdictions: Iowa, Kansas, Missouri, Nebraska.

Kansas City, Kansas Office

Kansas City Office,
Gateway Tower II,
400 State Avenue,
Kansas City, Kansas 66101–2406,
(913) 551–5462,
TDD Number: (913) 551–6972,
Office Hours: 8 am–4:30 pm local time.

Omaha, Nebraska Office—Category A Office

Office of the Manager,
HUD—Omaha Office,
10909 Mill Valley Road,
Omaha, Nebraska 68154–3955,
(402) 492–3100,
TDD Number: (402) 492–3183,
Office Hours: 8 am–4:30 pm local time.

St. Louis, Missouri Office—Category A Office

Office of the Manager,
HUD—St. Louis Office,
1222 Spruce Street,
St. Louis, Missouri 63103–2836,
(314) 539–6583,
TDD Number: (314) 539–6331,
Office Hours: 8 am–4:30 pm local time.

Des Moines, Iowa Office—Category B Office

Office of the Manager,
HUD—Des Moines Office,
Federal Building,
210 Walnut Street,
room 239,
Des Moines, Iowa 50309–2155,
(515) 284–4512,
TDD Number: (515) 284–4728,
Office Hours: 8 am–4:30 pm local time.

Rocky Mountain

Jurisdictions: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Denver, Colorado Office

HUD—Denver Office,
First Interstate Tower North,
633 17th Street,
Denver, CO 80202–3607,
(303) 672–5467,
TDD Number: (303) 672–5248,
Office Hours: 8 am–4:30 pm local time.

Denver, Colorado—Office of Native American Programs

HUD—Denver Office of Native American Programs,
First Interstate Tower North,
633 17th Street,
Denver, CO 80202–3607,
(303) 672–5248,
TDD Number: (303) 672–5248,
Office Hours: 8 am–4:30 pm local time.

Pacific/Hawaii

Jurisdictions: Arizona, California, Hawaii, Nevada.

San Francisco, California Office

HUD—San Francisco Office,
Phillip Burton Federal Building and U.S. Courthouse,
450 Golden Gate Avenue,
P.O. Box 36003,
San Francisco, California 94102–3448,
(415) 556–4752,
TDD Number: (415) 556–8357,
Office Hours: 8:15 am–4:45 pm local time.

Honolulu, Hawaii Office—Category A Office

Office of the Manager,
HUD—Honolulu Office,
7 Waterfront Plaza,
500 Ala Moana Boulevard,
room 500,
Honolulu, Hawaii 96813–4918,
(808) 541–1323,
TDD Number: (808) 541–1356,
Office Hours: 8 am–4 pm local time.

Los Angeles, California Office—Category A Office

Office of the Manager,
HUD—Los Angeles Office,
1615 West Olympic Boulevard,
Los Angeles, California 90015–3801,
(213) 251–7122,
TDD Number: (213) 251–7038,
Office Hours: 8 am–4:30 pm local time.

Sacramento, California Office—Category B Office

Office of the Manager,
HUD—Sacramento Office,
777 12th Avenue,
suite 200,
P.O. Box 1978,
Sacramento, California 96814–1997,
(916) 551–1351,
TDD Number: (916) 561–1367,
Office Hours: 8 am–4:30 pm local time.

Phoenix, Arizona Office—Category B Office

Office of the Manager,
HUD—Phoenix Office,
Two Arizona Center,
suite 1600,
400 North 5th Street,
Phoenix, Arizona 85004–2361,
(602) 261–4434,
TDD Number: (602) 379–4461,
Office Hours: 8 am–4:30 pm local time.

Phoenix, Arizona—Office of Native American Programs

HUD—Phoenix Office of Native American Programs,
Two Arizona Center,
suite 1650,
Phoenix, Arizona 85004–2361,
(602) 379–4156,
TDD Number: (602) 379–4461,
Office Hours: 8:15 am–4:45 pm local time.

Northwest/Alaska

Jurisdictions: Alaska, Idaho, Oregon, Washington.

Seattle, Washington Office

HUD—Seattle Regional Office,
Seattle Federal Office Building,
909 First Avenue,
suite 200,
Seattle, WA 98104–1000,
(206) 220–5101,
TDD Number: (206) 220–5185,
Office Hours: 8 am–4:30 pm local time.

Seattle, Washington—Office of Native American Programs

HUD—Seattle Office of Native American Programs,
Seattle Federal Office Building,
909 First Avenue,
suite 200,
Seattle, WA 98104–1000,
(206) 220–5270,
TDD Number: (206) 220–5185,
Office Hours: 8 am–4:30 pm local time.

Portland, Oregon Office—Category A Office

Office of the Manager,
HUD—Portland Office,
520 SW. 6th Avenue,
Portland, Oregon 97203–1596,
(503) 326–2561,
TDD Number: (503) 326–3656,
Office Hours: 8 am–4:30 pm local time.

Anchorage, Alaska Office—Category A Office

Office of the Manager,
HUD—Anchorage Office,
University Plaza Building,
949 East 36th Avenue,
suite 401,
Anchorage, Alaska 99508–4399,
(907) 271–4170,
TDD Number: (907) 271–4328.

[FR Doc. 94–11319 Filed 5–10–94; 8:45 am]

BILLING CODE 4210–33–P

federal register

Wednesday
May 11, 1994

Part V

Office of Personnel Management

5 CFR Part 630

Absence and Leave; Sick Leave; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AE95

Absence and Leave; Sick Leave

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations on the use and recredit of sick leave for Federal employees. The proposed regulations would expand the use of sick leave by permitting employees to use up to a total of 5 workdays of sick leave each leave year (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's scheduled tour of duty each week) to provide care for a child, spouse, or parent as a result of sickness, injury, pregnancy, or childbirth; make arrangements necessitated by the death of a child, spouse, or parent; or attend the funeral of a child, spouse, or parent. In addition,the proposed regulations would remove the 3-year break-in-service limitation on the recredit of sick leave.

DATES: 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, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, (202) 606–2880.

SUPPLEMENTARY INFORMATION: OPM proposes to amend 5 CFR 630.401 to provide that agencies must grant a limited amount of sick leave to employees who provide care for a child, spouse, or parent as a result of sickness, injury, pregnancy, or childbirth; to make arrangements necessitated by the death of a child, spouse, or parent; or to attend the funeral of a child, spouse, or parent. The proposed regulations would limit the use of sick leave for these purposes to a total of 5 workdays in a leave year (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's scheduled tour of duty each week).

In addition, OPM proposes to amend 5 CFR 630.502 and 504 to remove the 3-year break-in-service limitation on the recredit of sick leave and permit employees who separate from Federal service to have their unused and accrued sick leave recredited in full to their sick leave accounts upon return to Federal service. Under the proposed regulations, sick leave would be recredited to the employee regardless of the duration of the break in Federal service.

These proposed changes in the Federal leave system were recommended in the Report of the National Performance Review on September 7, 1993, and are part of OPM's continuing effort to develop human resource policies that are sensitive to the needs of employees and thereby enhance the Federal Government's ability to recruit and retain a well-qualified workforce. The purpose of the proposed changes in the circumstances under which employees may use sick leave is to recognize the needs of Federal employees who struggle to maintain an often precarious balance between work and family and to assist the Federal Government in recruiting and retaining the employees it needs to accomplish its mission. We have also proposed additional changes in § 630.401 to clarify our intent with regard to situations involving exposure to a severe contagious/communicable disease. We describe a severe communicable disease as one that requires isolation for a specified period, as prescribed by the health authorities having jurisdiction or as determined by a health care provider.

Because of the similarity of purpose, OPM proposes to use the same definitions of "child," "spouse," and "parent" as those used for "son or daughter," "spouse," and "parent" in the interim regulations implementing the Family and Medical Leave Act of 1993. (See 5 CFR 630.1202.)

The change in rules on the recredit of sick leave would ensure that, in the future, employees who have conscientiously maintained a substantial sick leave balance could leave Federal employment for any purpose (including the need to care for a child, spouse, or parent) without the risk of forfeiting all accrued sick leave upon returning to Federal employment thereafter. We believe this change would help to foster the conscientious use of sick leave by all employees.

Finally, the proposed regulations also include conforming changes in § 630.402 (Application for sick leave), § 630.403 (Supporting evidence), and § 630.405 (Use of sick leave during annual leave).

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; section 630.303 also issued under 5 U.S.C. 6133(a); section 630.501 and subpart F also issued under E.O. 11228; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Public Law 100–566; subpart J also issued under 5 U.S.C. 6362 and Public Law 100–566; subpart K also issued under Public Law 102–25.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

2. In § 630.201, paragraphs (b)(3), (4), (5), (6), and (7) are redesignated as (b)(4), (5), (7), (8), and (11), respectively, and new paragraphs (b)(3), (6), (9), and (10) are added to read as follows:

§ 630.201 Definitions.

* * * * *

(b) * * *

(3) *Child* means a biological, adopted, or foster child; a stepchild, a legal ward; or a child of a person standing *in loco parentis* who is—

(i) Under 18 years of age; or

(ii) 18 years of age or older and incapable of self-care because of a mental or physical disability. A child incapable of self-care requires active assistance or supervision to provide daily self-care in several of the "activities of daily living." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office. A mental or physical

disability refers to a "disability," as defined in 29 CFR 1630.2(g).

* * * * *

(6) *In loco parentis* refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

* * * * *

(9) *Parent* means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child. This term does not include parents "in law."

(10) *Spouse* means a husband or wife, as defined or recognized under State law for purposes of marriage, including common law marriage in States where it is recognized.

* * * * *

Subpart D—Sick Leave

3. In subpart D, § 630.401, is revised to read as follows:

§ 630.401 Grant of sick leave.

(a) Subject to the limitation described in paragraph (b) of this section, an agency shall grant sick leave to an employee when the employee—

(1) Receives medical, dental, or optical examination or treatment;

(2) Is incapacitated for the performance of duties by sickness, injury, pregnancy, or childbirth;

(3) Provides care for a child, spouse, or parent as a result of sickness, injury, pregnancy, or childbirth;

(4) Makes arrangements necessitated by the death of a child, spouse, or parent or attends the funeral of a child, spouse, or parent; or

(5) Would jeopardize the health of others by his or her presence on the job because of exposure to a severe communicable disease that requires isolation for a specified period, as prescribed by the health authorities having jurisdiction or as determined by a health care provider.

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3) and (4) of this section shall not exceed a total of 5 workdays (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's scheduled tour of duty each week).

4. Section 630.402 is revised to read as follows:

§ 630.402 Application for sick leave.

An employee shall file a written application for sick leave within such time limits as the agency may require. An employee shall request advance approval for sick leave for the purpose of receiving medical, dental, or optical examination or treatment and, to the extent possible, for the purposes described in § 630.401(a)(3) and (4) of this part.

5. Section 630.403 is revised to read as follows:

§ 630.403 Supporting evidence.

An agency may grant sick leave only when supported by evidence administratively acceptable. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his or her absence as evidence administratively acceptable. However, for an absence in excess of 3 workdays, or for a lesser period when determined necessary by an agency, the agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a) of this part.

6. Section 630.405 is revised to read as follows:

§ 630.405 Use of sick leave during annual leave.

Subject to the limitation described in § 630.401(b) of this part, an agency may grant sick leave during a period of annual leave for any of the purposes described in § 630.401(a) of this part.

Subpart E—Recredit of Leave

7. In subpart E, § 630.502 is revised to read as follows:

§ 630.502 Sick leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which the employee transfers shall certify his or her sick leave account to the employing agency for credit or charge.

(b) Except as provided in paragraph (c) of this section, an employee who is separated from the Federal Government is entitled to a recredit of sick leave if reemployed in the Federal Government on or after the effective date of these regulations, unless such sick leave was used in the computation of an annuity.

(c) An employee who is separated from the government of the District of Columbia and who was first employed by the government of the District of Columbia before October 1, 1987, is entitled to a recredit of sick leave if reemployed in the Federal Government on or after the effective date of these regulations, unless such sick leave was used in the computation of an annuity.

(d) When sick leave is transferred between different leave systems under section 6308 of title 5, United States Code, 7 calendar days of sick leave are deemed equal to 5 workdays of sick leave.

(e) An employee who transfers to a position under a different leave system to which he or she can transfer only a part of his or her sick leave is entitled to a recredit of the untransferred sick leave if the employee returns to the leave system under which it was earned on or after the effective date of these regulations.

(f) An employee who transfers to a position to which he or she cannot transfer his or her sick leave is entitled to a recredit of the untransferred sick leave if the employee returns to the leave system under which it was earned on or after the effective date of these regulations.

8. In § 630.504, paragraph (b) is revised to read as follows:

§ 630.504 Reestablishment of leave account after military service.

* * * * *

(b) Reemployed in a position under subchapter I of chapter 63 of title 5, United States Code, on or after the effective date of these regulations;

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[FR Doc. 94–11411 Filed 5–6–94; 3:24 pm]

BILLING CODE 6325–01–M

federal register

Wednesday
May 11, 1994

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 36

Seasonal Closure of the O'Malley River Area in the Kodiak National Wildlife Refuge; Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AC49

Seasonal Closure of the O'Malley River Area in the Kodiak National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule and request for comments.

SUMMARY: The Fish and Wildlife Service (Service) issues this interim regulation to limit public access, occupancy and use of a portion of the O'Malley River drainage and adjacent lands bordering Karluk Lake and O'Malley Lake within the Kodiak National Wildlife Refuge (Refuge). Public use of a parcel of land and water consisting of approximately 3,955 acres will be restricted from June 25, 1994, through September 30, 1994, to individuals participating in a refuge-sponsored bear viewing program.

This closure is necessary to prevent incompatible conflicts between people and brown bears at an important bear concentration area, during the season when conflicts and impacts on bears are most prevalent. It is intended to control increasing human use of a very important bear concentration area so that human uses in the area remain compatible with refuge purposes. Research and experience have clearly demonstrated that control of human activity in major bear concentration areas is necessary to avoid conflicts between people and bears. Organized bear viewing programs elsewhere in Alaska have proven highly successful in reducing conflict to an acceptable level while maintaining quality public use opportunities. This action will allow quality public viewing and photography opportunities through the O'Malley Bear Viewing Program without adversely affecting bear use of this important feeding area. After a thorough evaluation of the bear viewing program conducted during 1994, the Service will decide whether to continue the program.

A proposed rule that would provide a permanent seasonal restriction on public access is being published elsewhere in this separate part of the **Federal Register** with this interim rule.

DATES: This interim rule is effective from June 25, 1994, through September 30, 1994. Comments may be submitted by July 11, 1994.

ADDRESSES: Comments should be addressed to Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Attention: Tony Booth, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Jay Bellinger, Refuge Manager, Kodiak National Wildlife Refuge, 1390 Buskin River Road, Kodiak, Alaska 99615, Telephone: (907) 487–2600, or Tony Booth, Anchorage, AK, Telephone: (907) 786–3384.

SUPPLEMENTARY INFORMATION:

Background

President Franklin D. Roosevelt established the Kodiak National Wildlife Refuge by Executive Order 8857 on August 14, 1941, to "preserve the natural feeding and breeding ground of the brown bear and other wildlife." This action withdrew about 1.9 million acres from unreserved public domain on Kodiak and Uganik Islands. Congress redesignated the Kodiak National Wildlife Refuge in 1980 when it enacted the Alaska National Interest Lands Conservation Act (ANILCA). All the lands, water, interests, and submerged lands retained in federal ownership at the time of statehood were included in the refuge. This legislation also added about 50,000 acres of public lands on Afognak and Ban Islands to Kodiak National Wildlife Refuge. Section 303(5)(b) of ANILCA states generally that the purposes for which Kodiak National Wildlife Refuge is established and shall be managed include: (i) To conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, Kodiak brown bears, salmonoids, sea otters, sea lions, and other marine mammals and migratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide, in a manner consistent with purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence use by local residents; and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in subparagraph (i), water quality and necessary water quantity within the refuge.

The Kodiak Refuge Comprehensive Conservation Plan (U.S. Fish and Wildlife Service, 1987) provides primary guidance for management of the Kodiak National Wildlife Refuge. According to its approved alternative, "the Service will undertake detailed management planning to guide implementation of the plan and operation of the refuge." In support of that mandate, utilizing a full spectrum of public involvement, the final draft of the Kodiak Refuge Public Use Management Plan has been written. This interim rule and the proposed rule which is being published elsewhere in this separate part of the **Federal Register** are a result of direction provided by both these planning processes.

During 1990–91 the Service tested a trial bear viewing program, staffed by Refuge personnel, at the Dog Salmon Creek Fish Pass on Kodiak Refuge. No closure was utilized for unguided use, but guided use was restricted through the special use permit process. This trial bear viewing program was successful except that the presence of artificial fish passage structures significantly impaired the quality of viewing opportunities available to the public.

Public use is increasing about ten percent annually on the Kodiak National Wildlife Refuge and available information indicates the rate of increase is even greater in the O'Malley River area. Also, a trend of increasing adverse interactions between people and bears has occurred in the O'Malley River area in recent years. Generally, brown bears are negatively impacted by expanding human use. Bears are often killed "in defense of life or property" as a consequence of increased levels of human activity in areas that are used heavily by bears. In addition to mortality, interaction between bears and people can impose stress on bears that ultimately affect survival and/or productivity of bears as well as jeopardize human safety.

In 1991, a research camp was established on the O'Malley River to study bear use of the area and potential impacts of public use on bears. Research data document human impacts on bears in the O'Malley River area and confirm the need to control or restrict human uses in this area. The O'Malley River area supports approximately 33% of the entire brown bear population in the Karluk Lake basin. At least 110 different bears used the O'Malley River area during July–September 1991, with peak use occurring during the second and third weeks of July. More importantly, refuge research data suggest that frequently sighted bears represent only a small portion of the total population utilizing the O'Malley River area.

During approximately 250 hours of intensive observation of bear groups in the O'Malley River area in 1991, 66 interactions between bears and people were recorded. One-third of the interactions disturbed and/or displaced the bears by causing them to run or walk away from people. In one instance, people caused the separation of a female from one of her first-year cubs; while

trying to locate its mother, the cub was subsequently killed by another bear.

Alternatives considered in response to the public use/bear problems in the O'Malley River area include closing the area to all public use, which would satisfy the need to conserve bears, but would eliminate all opportunity for public use during the period of closure. The area could be left open to provide ample public use opportunity, but this use would have incompatible impacts on refuge bear populations. Seasonal closure in support of a bear viewing program not only would satisfy the need to conserve bears, but would also make possible continued public use. No other alternative could provide both benefits.

The refuge's trial bear viewing program initiated at Dog Salmon Creek was moved to the O'Malley River area in 1992 because of the documented problems and incompatibility between high and unregulated public use and bears in the O'Malley area. A temporary closure, pursuant to 50 CFR 36.42, was utilized to avoid conflicts between people and bears at this important seasonal bear concentration area. Goals of the trial O'Malley bear viewing program were:

1. To replace an incompatible level of unrestricted use of the O'Malley River area during key bear use periods, with a compatible recreational opportunity which would protect and conserve brown bear populations.

2. To develop and maintain a program that provides the general public a safe and professional guided bear viewing opportunity, that is consistent with Refuge management objectives and policies established in the Comprehensive Conservation Plan.

The program proved popular with the public; in 1992, 88 persons participated. The Service was satisfied that both program goals were adequately met.

The O'Malley Bear Viewing Program is designed to increase wildlife viewing opportunities for the public. The brown bears of Kodiak National Wildlife Refuge offer unique and highly desirable opportunities for viewing; opportunities that are most safely and effectively provided by a structured viewing program.

Structured wildlife viewing programs have been used successfully as a conservation management tool and to enhance public use opportunities elsewhere in Alaska. The best known program is conducted at the McNeil River State Game Sanctuary by the Alaska Department of Fish and Game. The McNeil River program has gained a worldwide reputation for quality bear viewing, and competition for permits is so intense that applicants have less than an 8 percent chance of obtaining a permit. Another popular bear viewing program is conducted at Brooks Camp in Katmai National Park. The number of visitors at Brooks Camp is not limited except by availability of lodge and campground facilities. Use of these facilities during peak visitation periods is presently at or beyond capacity and the National Park Service may limit the number of visitors in the future. A third bear viewing program is located at Pack Creek on Admiralty Island and is cooperatively managed by the U.S. Forest Service and Alaska Department of Fish and Game. Permits are required to visit Pack Creek; during 1993 the Forest Service announced that the number of visits to Pack Creek will be limited.

Experience at McNeil River State Game Sanctuary has demonstrated that brown bears are least disturbed by human activity that is consistent and predictable. Studies at the Brooks Camp and Pack Creek bear viewing programs have confirmed that unpredictable human activity causes some bears to avoid important habitat. Inconsistent human activity has also been shown to cause conflicts between people and bears. At the McNeil River Sanctuary, implementation of a structured bear viewing program increased bear use and at the same time reduced the incidence of bear/human conflicts.

Successful reduction of conflict, through implementation of a structured brown bear viewing program at O'Malley River, will require control of public use and access. Restriction of public use and access to anyone not participating in the viewing program will promote a quality wildlife experience for participants and reduce the potential for serious and incompatible conflicts between refuge visitors and bears. In this interim rule, public use and access would be restricted from June 25, 1994, to September 30, 1994. These dates were selected because it is the time period when the greatest number of bears are concentrated in the O'Malley River area to feed on the seasonal salmon runs that provide a critical component of their diet. Consequently, this is the period bears are most vulnerable to adverse impacts from excessive and unpredictable human use.

The Service has issued a permit, under which a private operator will conduct the O'Malley Program, for the period 1994–1998. The program will be thoroughly evaluated during 1994 and, if successful, will be continued.

This interim rule would remain in effect only through September 30, 1994. A proposed rule is being submitted concurrently with this interim rule to permanently restrict public entry and use of the O'Malley area annually to bear viewing program participants during the June 25 through September 30 period of heavy bear use.

Statutory Authority

In accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd), the Secretary is authorized under such regulations as he may prescribe to permit the use of any area within the National Wildlife Refuge System for any purpose whenever he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the area was established.

Section 304 of ANILCA requires the Secretary to prescribe such regulations and impose such terms and conditions as may be necessary and appropriate to ensure that any activities carried out on a national wildlife refuge in Alaska under any permit or easement granted under any authority are compatible with the purposes of that refuge.

Section 1306 of ANILCA permits the Service to provide visitor facilities in the refuge if compatible with the unit's purpose.

This rule is being generated to help structure public use. Adequately regulated public use is consistent with and will not interfere with the refuge purposes delineated above, and is thus compatible with the purposes for which Kodiak National Wildlife Refuge was established according to 16 U.S.C. 668(dd).

Request for Comments

Department of Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60 day comment period is specified in order to both facilitate public input and move forward to protect important refuge resources. Accordingly, interested persons may submit written comments concerning this interim rule to the persons listed above under the heading **ADDRESSES.** All substantive comments will be reviewed and considered.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that

require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Environmental Considerations

This rulemaking is categorically excluded under 40 CFR 1508.4 from the requirements of the National Environmental Protection Act of 1969 (42 U.S.C. 4321–4347) as an administrative action that will have no potential for causing substantial environmental impact.

Economic Effect

Implementation of this interim rule will seasonally close two tenths of one percent (.02%) of Kodiak Refuge lands, to commercial operators and public use not connected with the organized bear viewing program. Observations by refuge personnel indicate that commercial use of the closure area has historically been steady. All use (commercial and non-commercial) was estimated to have averaged 266 user days during 1989 and 1990, and 353 user days during 1991. These levels of use will clearly be exceeded by the amount of commercial use (minimum of 480 user days) that will be allowed under terms of a permit authorizing the bear viewing program. Thus, a net gain of commercial use is expected to occur. Also, at least a portion of the commercial use previously occurring in the closure area will simply be displaced to another location and therefore not lost to the local economy.

Changes in use of the resource will have no significant effect on national income. Private income will be enhanced, but dollar amounts will be small and have insignificant impact on the local economy. Agency costs for monitoring the closure and the bear viewing commercial operation will be approximately $40,000 less than that expended during fiscal year 1992 for program operation by the government.

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This interim rule would have minimal effect on such entities.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, and Wildlife refuges.

Accordingly, part 36 of chapter I of title 50 of the Code of Federal Regulations is proposed to be amended as follows:

Part 36—[AMENDED]

1. The authority citation for part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.*, 668dd *et seq.*, 742(a) *et seq.*, 3101 *et seq.*, and 44 U.S.C. 3501 *et seq.*

2. § 36.39 is amended by adding a new paragraph (j) effective from June 25, 1994, through September 30, 1994, to read as follows:

§ 36.39 Public use

* * * * *

(j) *Kodiak National Wildlife Refuge.*—(1) *Seasonal public use closure of the O'Malley River Area.* Certain areas within the Kodiak National Wildlife Refuge are closed to all public access, occupancy and use from June 25, 1994, through September 30, 1994, except for individuals participating in the O'Malley Bear Viewing Program. These areas subject to seasonal closure consist of lands and waters located within Townships 33 and 34 South, Range 30 West, Seward Meridian, Alaska, consisting of approximately 3,955 acres, and more specifically described as follows: Township 33 South, Range 30 West, Seward Meridian, Alaska, all of section 25; all of section 26, excluding U.S. Survey 10875 and the adjacent riparian ownership (Koniag Inc.) fronting the survey and extending to the center of Karluk Lake; all of section 27; the NE ¼ of section 34; and all of sections 35 and 36, excluding U.S. Survey 10876 and the adjacent riparian ownership (Koniag Inc.) fronting the survey and extending to the center of Karluk Lake; Township 34 South, Range 30 West, Seward Meridian, Alaska, the N ½ of section 1 and the N ½ of section 2. The refuge will provide a map of the closure area to all interested parties.

(2) *Access easement provision.* Notwithstanding any other provision of this paragraph (j), there exists a twenty-five foot wide access easement on an existing trail within the Koniag Inc. Regional Native Corporation lands within the properties described in paragraph (j)(1) of this section in favor of the United States of America.

Dated: April 13, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–11121 Filed 5–10–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AC49

Seasonal Closure of the O'Malley River Area in the Kodiak National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to limit public access, occupancy and use of a portion of the O'Malley River drainage and adjacent lands bordering Karluk Lake and O'Malley Lake within the Kodiak National Wildlife Refuge (Refuge). Public use of a parcel of land and water consisting of approximately 3,955 acres will be restricted from June 25 through September 30 annually to individuals participating in a refuge-sponsored bear viewing program.

This seasonal closure is necessary to prevent incompatible conflicts between people and brown bears at an important bear concentration area, during the season when conflicts and impacts on bears are most prevalent. It is intended to control increasing human use of a very important bear concentration area so that human uses in the area remain compatible with refuge purposes. Research and experience have clearly demonstrated that control of human activity in major bear concentration areas is necessary to avoid conflicts between people and bears. Organized bear viewing programs elsewhere in Alaska have proven highly successful in reducing conflict to an acceptable level while maintaining quality public use opportunities. This action will allow quality public viewing and photography opportunities through the O'Malley Bear Viewing Program without adversely affecting bear use of this important feeding area.

An interim rule that would provide a restriction on public access from June 25, 1994, to September 30, 1994, is being published elsewhere in this separate part of the **Federal Register** with this proposed rule.

DATES: Comments may be submitted by July 11, 1994.

ADDRESSES: Comments should be addressed to Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Attention: Tony Booth, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Jay Bellinger, Refuge Manager, Kodiak National Wildlife Refuge, 1390 Buskin River Road, Kodiak, Alaska 99615, Telephone: (907) 487–2600, or Tony Booth, Anchorage, AK, Telephone: (907)786–3384.

SUPPLEMENTARY INFORMATION:

Background

President Franklin D. Roosevelt established the Kodiak National Wildlife Refuge by Executive Order 8857 on August 14, 1941, to "preserve the natural feeding and breeding ground of the brown bear and other wildlife." This action withdrew about 1.9 million acres from unreserved public domain on Kodiak and Uganik Islands. Congress redesignated the Kodiak National Wildlife Refuge in 1980 when it enacted the Alaska National Interest Lands Conservation Act (ANILCA). All the lands, water, interests, and submerged lands retained in federal ownership at the time of statehood were included in the refuge. This legislation also added about 50,000 acres of public lands on Afognak and Ban Islands to Kodiak National Wildlife Refuge. Section 303 (5) (b) of ANILCA states generally that "[t]he purposes for which Kodiak National Wildlife Refuge is established and shall be managed include (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, Kodiak brown bears, salmonoids, sea otters, sea lions, and other marine mammals and migratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide, in a manner consistent with purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence use by local residents; and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in subparagraph (i), water quality and necessary water quantity within the refuge.

The Kodiak Refuge Comprehensive Conservation Plan (U.S. Fish and Wildlife Service, 1987) provides primary guidance for management of the Kodiak National Wildlife Refuge. According to its approved alternative, "the Service will undertake detailed management planning to guide implementation of the plan and operation of the refuge." In support of that mandate, utilizing a full spectrum of public involvement, the final draft of the Kodiak Refuge Public Use Management Plan has been written. This proposed rule and the interim rule which is being published elsewhere in this separate part of the **Federal Register** are a result of direction provided by both these planning processes.

During 1990–91 the Service tested a trial bear viewing program, staffed by Refuge personnel, at the Dog Salmon Creek Fish Pass on Kodiak Refuge. No closure was utilized for unguided use, but guided use was restricted through the special use permit process. This trial bear viewing program was successful except that the presence of artificial fish passage structures significantly impaired the quality of viewing opportunities available to the public.

Public use is increasing about ten percent annually on the Kodiak National Wildlife Refuge and available information indicates the rate of increase is even greater in the O'Malley River area. Also, a trend of increasing adverse interactions between people and bears has occurred in the O'Malley River area in recent years. Generally, brown bears are negatively impacted by expanding human use. Bears are often killed "in defense of life or property" as a consequence of increased levels of human activity in areas that are used heavily by bears. In addition to mortality, interaction between bears and people can impose stress on bears that ultimately affect survival and/or productivity of bears as well as jeopardize human safety.

In 1991, a research camp was established on the O'Malley River to study bear use of the area and potential impacts of public use on bears. Research data document human impacts on bears in the O'Malley River area and confirm the need to control or restrict human uses in this area. The O'Malley River area supports approximately 33% of the entire brown bear population in the Karluk Lake basin. At least 110 different bears used the O'Malley River area during July–September 1991, with peak use occurring during the second and third weeks of July. More importantly, refuge research data suggest that frequently sighted bears represent only a small portion of the total population utilizing the O'Malley River area.

During approximately 250 hours of intensive observation of bear groups in the O'Malley River area in 1991, 66 interactions between bears and people were recorded. One-third of the interactions disturbed and/or displaced the bears by causing them to run or walk away from people. In one instance, people caused the separation of a female from one of her first-year cubs; while trying to locate its mother, the cub was subsequently killed by another bear.

Alternatives considered in response to the public use/bear problems in the O'Malley River area include closing the area to all public use, which would

satisfy the need to conserve bears, but would eliminate all opportunity for public use during the period of closure. The area could be left open to provide ample public use opportunity, but this use would have incompatible impacts on refuge bear populations. Seasonal closure in support of a bear viewing program not only would satisfy the need to conserve bears, but would also make possible continued public use. No other alternative could provide both benefits.

The refuge's trial bear viewing program initiated at Dog Salmon Creek was moved to the O'Malley River area in 1992 because of the documented problems and incompatibility between high and unregulated public use and bears in the O'Malley area. A temporary closure, pursuant to 50 CFR 36.42, was utilized to avoid conflicts between people and bears at this important seasonal bear concentration area. Goals of the trial O'Malley bear viewing program were:

1. To replace an incompatible level of unrestricted use of the O'Malley River area during key bear use periods, with a compatible recreational opportunity which would protect and conserve brown bear populations.

2. To develop and maintain a program that provides the general public a safe and professional guided bear viewing opportunity, that is consistent with Refuge management objectives and policies established in the Comprehensive Conservation Plan.

The program proved popular with the public; in 1992, 88 persons participated. The Service was satisfied that both program goals were adequately met.

The O'Malley Bear Viewing Program is designed to increase wildlife viewing opportunities for the public. The brown bears of Kodiak National Wildlife Refuge offer unique and highly desirable opportunities for viewing; opportunities that are most safely and effectively provided by a structured viewing program.

Structured wildlife viewing programs have been used successfully as a conservation management tool and to enhance public use opportunities elsewhere in Alaska. The best known program is conducted at the McNeil River State Game Sanctuary by the Alaska Department of Fish and Game. The McNeil River program has gained a worldwide reputation for quality bear viewing, and competition for permits is so intense that applicants have less than an 8 percent chance of obtaining a permit. Another popular bear viewing program is conducted at Brooks Camp in Katmai National Park. The number of visitors at Brooks Camp is not limited except by availability of lodge and campground facilities. Use of these facilities during peak visitation periods is presently at or beyond capacity and the National Park Service may limit the number of visitors in the future. A third bear viewing program is located at Pack Creek on Admiralty Island and is cooperatively managed by the U.S. Forest Service and Alaska Department of Fish and Game. Permits are required to visit Pack Creek; during 1993 the Forest Service announced that the number of visits to Pack Creek will be limited.

Experience at McNeil River State Game Sanctuary has demonstrated that brown bears are least disturbed by human activity that is consistent and predictable. Studies at the Brooks Camp and Pack Creek bear viewing programs have confirmed that unpredictable human activity causes some bears to avoid important habitat. Inconsistent human activity has also been shown to cause conflicts between people and bears. At the McNeil River Sanctuary, implementation of a structured bear viewing program increased bear use and at the same time reduced the incidence of bear/human conflicts.

Successful reduction of conflict, through implementation of a structured brown bear viewing program at O'Malley River, will require control of public use and access. Restriction of public use and access to anyone not participating in the viewing program will promote a quality wildlife experience for participants and reduce the potential for serious and incompatible conflicts between refuge visitors and bears. Public use and access would be restricted only seasonally, from June 25 to September 30. These dates were selected because it is the time period when the greatest number of bears are concentrated in the O'Malley River area to feed on the seasonal salmon runs that provide a critical component of their diet. Consequently, this is the period bears are most vulnerable to adverse impacts from excessive and unpredictable human use.

The Service has issued a permit, under which a private operator will conduct the O'Malley Program, for the period 1994–1998. The program will be thoroughly evaluated during 1994 and, if successful, will be continued. If unsuccessful, the program will be discontinued but the public use closure would be retained to protect feeding bears from incompatible disturbance.

Statutory Authority

In accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd), the Secretary is authorized under such regulations as he may prescribe to permit the use of any area within the National Wildlife Refuge System for any purpose whenever he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the area was established.

Section 304 of ANILCA requires the Secretary to prescribe such regulations and impose such terms and conditions as may be necessary and appropriate to ensure that any activities carried out on a national wildlife refuge in Alaska under any permit or easement granted under any authority are compatible with the purposes of that refuge.

Section 1306 of ANILCA permits the Service to provide visitor facilities in the refuge if compatible with the unit's purpose.

This rule is being generated to help structure public use. Adequately regulated public use is consistent with and will not interfere with the refuge purposes delineated above, and is thus compatible with the purposes for which Kodiak National Wildlife Refuge was established according to 16 U.S.C. 668(dd).

Request for Comments

A public hearing on this proposed rule was advertised in Alaska and held on April 26, 1994, at Kodiak High School, Kodiak, Alaska. Department of Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60 day comment period is specified in order to both facilitate public input and move forward to protect important refuge resources. Accordingly, interested persons may submit written comments concerning this proposed rule to the persons listed above under the heading ADDRESSES. All substantive comments will be reviewed and considered.

Paperwork Reduction Act

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

Environmental Considerations

This rulemaking is categorically excluded under 40 CFR 1508.4 from the requirements of the National Environmental Protection Act of 1969

(42 U.S.C. 4321–4347) as an administrative action that will have no potential for causing substantial environmental impact.

Economic Effect

Implementation of the proposed rule will seasonally close two tenths of one percent (.02%) of Kodiak Refuge lands, to commercial operators and public use not connected with the organized bear viewing program. Observations by refuge personnel indicate that commercial use of the closure area has historically been steady. All use (commercial and non-commercial) was estimated to have averaged 266 user days during 1989 and 1990, and 353 user days during 1991. These levels of use will clearly be exceeded by the amount of commercial use (minimum of 480 user days) that will be allowed under terms of a permit authorizing the bear viewing program. Thus, a net gain of commercial use is expected to occur. Also, at least a portion of the commercial use previously occurring in the closure area will simply be displaced to another location and therefore not lost to the local economy.

Changes in use of the resource will have no significant effect on national income. Private income will be enhanced, but dollar amounts will be small and have insignificant impact on the local economy. Agency costs for monitoring the closure and the bear viewing commercial operation will be approximately $40,000 less than that expended during fiscal year 1992 for program operation by the government.

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This proposed rule would have minimal effect on such entities.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, and Wildlife refuges.

Accordingly, part 36 of chapter I of title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) et seq., 668dd et seq., 742(a) et seq., 3101 et seq., and 44 U.S.C. 3501 et seq.

2. § 36.39 (j) is revised to read as follows:

§ 36.39 Public use.

* * * * *

(j) *Kodiak National Wildlife Refuge.*—(1) *Seasonal public use closure of the O'Malley River Area.* Certain areas within the Kodiak National Wildlife Refuge are closed from June 25 through September 30 annually to all public access, occupancy and use, except for individuals participating in the O'Malley Bear Viewing Program. These areas subject to seasonal closure consist of lands and waters located within Townships 33 and 34 South, Range 30 West, Seward Meridian, Alaska, consisting of approximately 3,955 acres, and more specifically described as follows: Township 33 South, Range 30 West, Seward Meridian, Alaska, all of section 25; all of section 26, excluding U.S. Survey 10875 and the adjacent riparian ownership (Koniag Inc.) fronting the survey and extending to the center of Karluk Lake; all of section 27; the NE 1/4 of section 34; and all of sections 35 and 36, excluding U.S. Survey 10876 and the adjacent riparian ownership (Koniag Inc.) fronting the survey and extending to the center of Karluk Lake; Township 34 South, Range 30 West, Seward Meridian, Alaska, the N 1/2 of section 1 and the N 1/2 of section 2. The refuge will provide a map of the closure area to all interested parties.

(2) *Access easement provision.* Notwithstanding any other provision of this paragraph (j), there exists a twenty-five foot wide access easement on an existing trail within the Koniag Inc. Regional Native Corporation lands within the properties described in (j)(1) of this section in favor of the United States of America.

Dated: April 13, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–11120 Filed 5–10–94; 8:45 am]

BILLING CODE 4310–55–P

federal register

Wednesday
May 11, 1994

Part VII

Department of the Interior

Bureau of Land Management

43 CFR Part 3720, et al.
Mining Claims; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3720, 3730, 3800, 3810, 3820, 3830, and 3850.

[WO-660-4191-02-24 1A]

RIN 1004-AC17

Mining Claims; Rental, Maintenance, and Location Fees; Lands Open to Location, National Parks, King Range National Conservation Area, Indian Reservations, Surface Management; Removal of Obsolete or Expired Regulations, Consolidation of Remaining Sections

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This document has two objectives. The rule would implement Title X, Subtitle B, sections 10101 through 10106 of the Omnibus Budget Reconciliation Act of August 10, 1993 (Pub. L. 103-66, 107 Stat. 312) (the Act), which are entitled "Hardrock Mining Claim Maintenance Fee." Section 10106 of the Act requires the Secretary to issue regulations implementing the Act as soon as practicable after enactment. The Act extends, in effect, with certain modifications, the mining claim fee provisions of the Act of October 5, 1992, until September 30, 1998. These Acts require, unless the claimant qualifies for an exemption (or waiver), payment of an annual fee of $100 per mining claim or site located and held on the public lands pursuant to the General Mining Law of 1872. The Act also establishes a new location fee of $25 for each new mining claim or site located on public lands on or after August 11, 1993, and before September 30, 1998, which is required to be paid at the time of recording of the mining claim or site with the Bureau of Land Management (BLM) under section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA) and the regulations in 43 CFR 3833. It also implements the new location and recording requirements for mining claims located on Stockraising Homestead Act lands required by the Act of April 16, 1993 (107 Stat. 60).

It removes obsolete or expired provisions, and consolidates provisions that are still in force and effect, in the regulations concerning location and entry of mining claims and sites on coal bearing lands, on the National Park System units, the King Range Conservation Area, and Indian reservations.

DATES: Comments should be submitted by June 10, 1994. Comments received or postmarked after this date may not be considered in the decision making process on the issuance of the final rule.

ADDRESSES: Comments should be submitted to: Director (140), Bureau of Land Management, room 5555 MIB, 1849 C Street NW., Washington, DC 20240. Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frank Bruno, (202) 452-0350, or Roger Haskins, (702) 785-6576.

SUPPLEMENTARY INFORMATION:

1. Maintenance and Location Fees

Most of this rule is devoted to amending the regulations (43 CFR parts 3730, 3820, 3830, and 3850) previously published in the **Federal Register** on July 15, 1993 (58 FR 38186), and corrected on August 3, 1993 (58 FR 41184). That rule implemented the Act of October 5, 1992 (106 Stat. 1374), which required a $100 rental fee per mining claim or site for the 1993 and 1994 assessment years, with payment due for both assessment years by August 31, 1993. The law exempted claimants who owned 10 or fewer mining claims and sites and met other criteria. The 1993 Act extended the $100 per claim or site fee to September 30, 1998, making it an annual payment of $100 due on each August 31st, to hold the claim or site for the upcoming assessment year. The name of the fee was changed in the Act from "rental fee" to "maintenance fee." A new fee of $25, called a location fee, is required under section 10102 of the Act. It is a one-time fee to be paid to BLM at the time the new mining claim or site is recorded. The Act allows a waiver from the maintenance fee for claimants who own 10 or fewer mining claims and sites, for certain mining claims and sites undergoing reclamation, and for several other situations. Numerous specific provisions in the regulations on mining would be amended to reflect the new terminology and the requirements of the 1993 Act. These include provisions relating to filing claims on O. and C. (revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant) Lands in subpart 3821.

On April 16, 1993, Public Law 103-23 (107 Stat. 60) was enacted, requiring new procedures and filings for claimants locating and operating mining claims on lands patented under the Stockraising Homestead Act of 1916 (SRHA, 43 U.S.C. 299). Effective October 13, 1993, prior to locating a mining claim on such lands, a claimant is required to file with the Secretary of the Interior a notice of intent to locate a mining claim and to notify the surface owner of such notice of intent. SRHA lands may not be entered for the location of a mining claim until 30 days after the surface owner has received notice of the filing of such notice of intent to locate. Filing of the notice of intent with BLM also has the effect of segregating the land sought for 90 days from all other land and mineral entry by anyone else. Filing of a Plan of Operations (now required by the SRHA) extends the segregation until the Plan is approved or denied by the BLM District Office.

A section-by-section discussion of the amendments to implement these statutory changes follows. Other changes would be made in certain sections for purposes of updating and clarifying the regulations.

Subpart 3730—Public Law 359; Mining in Power Site Withdrawals: General. The sections on authorities (§ 3730.0-3) and information collection (§ 3730.0-9) would be amended to add references to the Act of August 10, 1993 (107 Stat. 312). The section on Purpose (§ 3730.0-1) would also be amended to refer to lands included under the O. and C. Act, and would be subdivided for clarity.

Subpart 3734—Location and Assessment Work. Section 3734.1 of this subpart, which requires the owner of a claim to file notice of location and assessment work, would be amended at paragraphs (a) and (c) to provide for the maintenance fee required by the Act.

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites; Payment of Service Charges, Rental, Maintenance, and Location Fees. This subpart, including its title, would be amended to reflect the addition of maintenance and location fees required by the Act. Various sections would be amended as follows:

Section 3833.0-1 Purpose. Paragraph (c) of this section would be amended to add as a purpose the implementation of the annual maintenance fee established by the Act.

Section 3833.0-3 Authority. Paragraphs (e) and (f) of this section would be amended by adding the Act to the rental fee authority. A new paragraph (g) would be added to implement the mining claim entry and location amendments to the Stockraising Homestead Act of 1916 enacted by Public Law 103-23, 107 Stat. 60. The new paragraph cross-references part 3814, which has not yet been

amended to reflect the Act of April 16, 1993, as of this publication. However, BLM is preparing a proposed rule that would amend part 3814 for this purpose. A new paragraph (h) would be added to refer to the Soldier's and Sailor's Relief Act of 1940 (50 U.S.C. Appendix 565), which excuses active duty military personnel from performance of assessment work.

Section 3833.0–5 Definitions. The definitions section would be amended by revising the definitions of "owner," "proper BLM office," "file or filed," "filing year," "rental fee," and "small miner," and adding definitions of "maintenance fee," "location fee," "related party," and "control," new terms introduced in the Act. Also added are definitions of "forfeiture," "returnable," and "refundable." The rule would define "forfeiture" as it pertains to mining claims or sites under section 314 of FLPMA, and the acts of October 5, 1992, and August 10, 1993. The U.S. Supreme Court, in *United States v. Locke*, 471 U.S. 84 (1985), determined that the term "abandonment" as used in FLPMA was equivalent to "forfeiture."

The definition of "owner" would be amended to make it clear that ownership of a mining claim is determined by State and Federal law, and that the owner's current address of record is required to be stated on all instruments recorded or filed with the BLM under this subpart.

The definition of "proper BLM office" would be amended to add the Northern District Offices Records and Public Information Unit in Fairbanks, Alaska, as a proper recording office for mining claim instruments in Alaska, in addition to the office in Anchorage.

The definition of "file or filed" would be amended to apply the postmark rule to rental and maintenance fees, to the filing of waiver statements by qualified small miners, and new locations or certificates of location.

The definition of "filing year" would be amended by substituting the term "filing period," and divided to define the filing dates for fees or exemptions under the Act.

The definition of "rental fee" would be amended to remove language pertaining to the rental fee required by the Act of October 5, 1992, which is no longer necessary.

The definition of "nonrefundable" would be removed, and a new section 3833.1–8 would be added to the regulations providing for the refund of maintenance and location fees as well as rental fees under certain circumstances, in order to conform to the Act, and further clarifying under what conditions a refund may be obtained.

Section 3833.0–9 Information collection. This section would be amended to add the Acts of April 16, 1993, and August 10, 1993, to the authorities.

Section 3833.1–2 Recordation of mining claims, mill sites, and tunnel sites located after October 21, 1976. This section would be amended by adding a new paragraph (c) to explain the requirements of the Act of April 16, 1993 (107 Stat. 60), which amended the SRHA as it pertains to the location of mining claims. The Act of April 16, 1993, places additional requirements for approval of mineral operations on Stockraising Homestead lands and for additional bonding to protect the surface owner from the effects of mining operations. These additional requirements will be covered by another proposed rule to amend 43 CFR subpart 3814.

Section 3833.1–3 Service charges, rental fees, maintenance fees, and location fees; form of remittance and acceptance. This section is amended to add the maintenance and location fees, and restructured to clarify the payment-for-services policy with respect to mining claim documents, filings, and fees.

Section 3833.1–4 Service charges and location fees. This section is amended to add the maintenance and location fees into the appropriate paragraphs, and is reorganized for clarity.

Section 3833.1–5 Rental fees and maintenance fees. This section is amended to add the maintenance fees to the existing rental fees, and to state when and under what circumstances each is due and payable. A new paragraph (g) is added to allow an exempted mining claim, if transferred to a party not entitled to a waiver, to have the rental or maintenance fee otherwise owed on the mining claim paid by the transferee at the time of recording the transfer pursuant to 3833.3 of this title. A new paragraph (h) is added to implement section 10105(c) of the Act of August 10, 1993. This section of the Act requires that the maintenance fee and location fee be adjusted every five years, or allows adjustments to be made sooner if the Secretary deems it reasonable, based upon any changes in the Consumer Price Index. Notice of any change is required to be given by July 1st of any year, with the new fee due by August 31st of that same year. A new paragraph (i) is added to state that the $100 annual maintenance fee applies to all mill and tunnel sites, and that a waiver of payment of the fee for mill and tunnel sites may be obtained under special circumstances.

Section 3833.1–6 Maintenance fee waiver qualifications under the Act of August 10, 1993—Applicable from 12 O'clock noon on September 1, 1993, until 12 O'clock noon September 1, 1998. This section would be retitled and revised to identify the conditions under which a waiver of payment of the maintenance fees under the Act may be obtained.

Section 3833.1–7 Filing requirements for maintenance fee exemptions (waivers). This section would be revised to identify the documents required and deadlines for applying for a waiver of payment of the maintenance fees under the Act. This provision operates in advance of each upcoming assessment year. The assessment work performed during a given assessment year, certified to under this section, holds the mining claim for the next assessment year without payment of the maintenance fee. For those claimants who do not pay the required claim maintenance fee and who instead seek a waiver from such payment requirement, the failure to file a certified statement by each August 31 certifying that the assessment work was done for the assessment year just ending will cause the mining claim to be forfeited under the Act. In addition, failure to file affidavits of annual assessment work on or before December 30 of the year in which the small miner certification was made will cause the mining claim to be forfeited under the Federal Land Policy and Management Act. (For example, a certification filed by a qualified claimant on August 31, 1994, certifies performance of assessment work for the assessment year that began at noon on September 1, 1993. This allows a waiver of payment of the maintenance fee due on August 31, 1994, to hold the claim for the assessment year beginning at noon on September 1, 1994. However, if the affidavit of labor is not filed by December 30, 1994, for the work done for the assessment year beginning at noon September 1, 1993, the claims are deemed abandoned and void and are forfeited. This process begins again with the next certification deadline of August 31, 1995).

Section 3833.1–8 Refundability of service charges, location fees, rental and maintenance fees. This section, which would be moved from § 3833.0–5(v) in the current regulations, would be amended to reference location and maintenance fees, allow refunds of service fees in certain circumstances, allow for refunds of duplicate payments, and allow for refunds in any other

situation in which a payment is made for a mining claim that was void by operation of law at the time the payment was made. Also added is a provision that voluntary actions are not considered a reason for a refund.

Section 3833.2–3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, the Act of October 5, 1992, and the Act of August 10, 1993. The section title would be revised to add the Act of August 10, 1993, and paragraphs (d) and (e) would be amended to reflect the new dates in 1999 when assessment work is required to be resumed when the Act expires.

Section 3833.2–6 When evidence or notice is not required. This section would be amended to add the conditions contained in the Act.

Section 3833.3 Notice of transfer of interest. Paragraph (c) would be amended to state clearly when a transfer of interest becomes effective on the title records of BLM.

Section 3833.4 Failure to file, or to pay rental, maintenance fees, or location fees. The section title would be revised by adding maintenance and location fees. Paragraph (a) would be amended by adding the conditions of the Act. The amendment in this paragraph would not allow claimants who do not qualify for a small miner waiver to claim a waiver on only ten or fewer claims. This provision does not cause an automatic relinquishment of a claimant's mining claims or sites that are over the ten-claim limit for small miner waivers. Paragraph (b) would be amended by correcting cross-references. A new paragraph (c) would be added to explain the Bureau's policy on the effect of failure by a purchaser or transferee of a mining claim or site to record the new ownership interest with the BLM.

Subpart 3851—Assessment Work: General. This subpart also would be amended to implement the statutory changes contained in the Act. A discussion of the sections to be affected and the changes to be made follows:

Section 3851.3 Effect of failure to perform assessment work. Paragraph (c) of this section would be amended to state that the Act suspends and supersedes the requirements to perform assessment work.

Section 3851.4 Failure of a co-owner to contribute to annual assessment work or to the payment of rental or maintenance fees. The section title would be amended by adding maintenance fees. The existing section is divided into new paragraphs (a) and (b) and the failure to pay the maintenance fee is added as another ground for action against a delinquent co-owner. A new paragraph (c) would be added to identify the action required of co-owners who have met the publication requirements of § 3851.4 to terminate the interest of a delinquent co-owner, and would like the BLM record title to the mining claim corrected. A new paragraph (d) would be added to refer to the Soldier's and Sailor's Relief Act and the fact that pursuant to that Act, an active duty military person may not be so "published out" for failure to contribute as long as he or she is on active duty and has complied with § 3851.6.

Section 3851.5 Assessment work not required after allowance of mineral entry. This section would be amended to reflect the effects of the Act on claims for which mineral patent applications have been filed. After the first half of the mineral entry final certificate has been issued by the Secretary of the Interior confirming the mineral entry, there is no longer a requirement to perform assessment work, and no requirement to pay the rental or maintenance fees.

New § 3851.6 Assessment work not required for active duty military personnel. This new section would be added to explain how an active duty military person may apply for and receive an exemption from the performance of assessment work and payment of maintenance fees under the Soldier's and Sailor's Relief Act.

Subpart 3852—Deferment of Assessment Work. This subpart would be amended for purposes of updating and clarification. Amendments would occur in the following sections.

Section 3852.0–3 Authority.

Section 3852.2 Filing of Petition for deferment, contents. The first two sentences of paragraph (a) would be revised to state clearly the filing requirements for a deferment of assessment work.

Section 3852.3 Notice of action on petition to be recorded. This section would be amended to state more clearly the recording requirements for a petitioner, once the BLM authorized officer has ruled on the merits of the petition for deferment of assessment work.

2. Removal of Obsolete Provisions and General Streamlining of Mining Law Regulations

Parts 3720, 3800, 3810 and 3820 of title 43, Code of Federal Regulations have subparts and sections that are no longer in effect or no longer operative due to the repeal of the statutes upon which they are based or the transfer of the regulatory authority to another Interior agency that has promulgated new rules to replace the current rules. The proposed rule would reflect these changes. Subpart 3827 is consolidated into subpart 3809, as the two sets of surface management regulations are duplicative.

Part 3720—Public Law 357; Entry and Location of Source Materials upon Public Lands Valuable for Coal; Subpart 3722—Report to Geological Survey. Existing part 3720 and subpart 3722 of this title are based upon Section 1 of the Act of August 11, 1955 (30 U.S.C. 541), concerning payment by mining claimants to the United States for the value of lignite coal mined and removed in the development of mines for source materials (uranium, thorium, and other radioactive minerals). As further provided by section 10 of the Act of August 11, 1955 (30 U.S.C. 541i), this provision expired on August 11, 1975, and all mining claims located upon coal-bearing lands under this Act terminated by operation of law unless patent had been applied for prior to August 11, 1975. All coal lands were removed from mineral location and entry as of August 11, 1975. Therefore, part 3720, including subpart 3722, would be removed in its entirety and the part number reserved for future use.

Subpart 3809—Surface Management. This subpart would be amended to add the statute designating the King Range Conservation Area to the authorities section, to define the term in the definitions section, and to include the King Range in § 3809.1–4(b) as an area requiring a mandatory plan of operations for all activities exceeding casual use. The authorities section will also be amended to include the Act of April 16, 1993, for Stockraising Homestead Act lands.

Subpart 3811—Lands Subject to Location and Purchase. Three sections in this subpart are no longer necessary and would be revised or removed. Section 3811.2–2 relates to lands in National Parks and National Monuments. The Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), effectively closed all National Parks and Monuments to any further mining claim location or mineral entry. After September 28, 1976, no mining claims could be located in any unit of the National Park System. The existing language of § 3811.2–2, which provides that certain National Parks and Monuments are open to mining claim location, no longer serves any purpose. Regulations governing access to existing mining claims on National Parks and Monuments, and operations thereon, were published by the National Park Service in 1977, and are now codified at 36 CFR part 9. Section 3811.2–2 would be revised to state simply that no

units of the National Park System are open to the location of mining claims under the General Mining Law of 1872, as amended.

Section 3811.2–3 Lands in Indian reservations. This section would be revised to state that all Indian reservations are closed to the location of mining claims and to entry under the General Mining Law of 1872, as amended. The Papago Indian Reservation in Arizona (now called the To Ho No O'odham Reservation) was open to mining claim location and entry from June 18, 1934, until May 27, 1955, pursuant to the Act of June 18, 1934 (25 U.S.C. 461–479, as amended). Since May 27, 1955, this reservation has been closed to mining claim location, pursuant to the Act of May 27, 1955 (25 U.S.C. 463). All minerals on lands in Indian reservations may be acquired only by lease pursuant to the Act of May 11, 1938 (25 U.S.C. 396a), the Act of March 3, 1909 (25 U.S.C. 396), or the Indian Mineral Development Act of 1982, 25 U.S.C. 2101 *et seq.* The regulations governing such mineral leasing is found in subchapter I, title 25, Code of Federal Regulations.

Section 3811.2–8 Lands under Alaska Public Sale Act. The Alaska Public Sale Act (48 U.S.C. 364a-364e) was repealed effective October 21, 1986, by Section 703(a) of FLPMA (43 U.S.C. 1701). Accordingly, § 3811.2–8 would be removed in this proposed rule.

Section 3821.0–3 Authority. This section is amended to add the Act of August 10, 1993, as one of the authorities for the regulations in part 3820.

Section 3821.2 Requirements for filing notices of locations of claims; descriptions. This section is amended to add maintenance, location, and service fees as fees payable under part 3820 when locating a claim. A further change states that the location notice or amendment is required to indicate the applicable acts under which the claim is filed.

Section 3821.3 Requirement for filing statements of assessment work. This section is amended to add the maintenance fee as a fee payable when complying with annual requirements under part 3820.

Subpart 3826—National Park Service Areas. This subpart was also rendered inoperative by the Act of September 28, 1976 (16 U.S.C. 1901 *et seq.*), which closed and withdrew from all forms of mineral entry and appropriation all lands and units of the National Park System. The authority for administering the mining claims and sites located within the units prior to September 28, 1976, has been transferred to the National Park Service. Access to and operations upon mining claims and sites located within the units of the National Park System are now governed by 36 CFR part 9, and subpart 3826 would be removed in this rule.

Subpart 3827—King Range National Conservation Area. This subpart will be removed because it is duplicated in subpart 3809. It became effective in April 1976 to implement the surface management requirements of the Act of October 21, 1970 (84 Stat. 1070), which established the King Range National Conservation Area. Section 5 of that Act required that all activities occurring pursuant to the General Mining Law of 1872 (30 U.S.C. 22 *et seq.*) be managed to prevent environmental damage and provide for reclamation. Subsequent to the April 1976 rule, on October 21, 1976, FLPMA was enacted. Section 302(b) of that Act required that all public lands be managed to prevent undue or unnecessary degradation from activities on them, including activities under the General Mining Law of 1872. Section 602 of FLPMA expanded the boundaries of the King Range Conservation Area. Subsequently, regulations were promulgated at 43 CFR subpart 3809 in November 1980 regulating all mining activities on public lands under the administration of the Bureau. These regulations in subpart 3809 duplicate subpart 3827 in form, content, and requirements. Therefore, the regulations in subpart 3827 would be merged with subpart 3809, and subpart 3809 would be amended to include the King Range Conservation Area, under the same criteria as currently apply to the California Desert Conservation Area. Since enactment of FLPMA, the BLM has received no Plans of Operations for mining in the King Range Conservation Area lands.

It has been determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual, Chapter 2, Appendix 1, Item 1.10, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule has been reviewed under Executive Order 12866.

The Department also certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The fee may represent an economic consideration for a small, marginal operation that does not qualify for an exemption under the rule. However, most small operations would qualify. A small entity that holds a valuable mining claim will not be deterred by the annual fee, and many of them will qualify for an exemption. Most marginal claims were already abandoned in 1993 upon promulgation of the regulations implementing the Act of October 5, 1992.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. The requirement that a modest fee be paid to hold or maintain an existing unpatented mining claim, mill or tunnel site constitutes a reasonable regulatory burden, and it will have no effect on a claimant's possessory interest in or enjoyment of his or her claim or site as long as he or she complies with the requirement.

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

The provisions for collection of information contained at 43 CFR parts 3730, 3820, 3830, and 3850, and subpart 3809 have previously been approved by the Office of Management and Budget and assigned clearance numbers 1004–0104, 1004–0110, and 1004–0114. Information collections for parts 3730, 3820, 3830, and 3850 were consolidated under clearance number 1004–0114 in the July 15, 1993 rulemaking (58 FR 38186). As this rulemaking removes obsolete or inoperative sections of title 43, Code of Federal Regulations, and extends the previously enacted Act of October 5, 1992, and implementing regulations published on July 15, 1993, this rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 3720

Coal, Mineral royalties, Mines, Public lands—mineral resources.

43 CFR Part 3730

Administrative practice and procedure, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR Part 3810

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3820

Mines, Monuments and memorials, National forests, National parks, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR 3830

Mineral royalties, Fees, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR 3850

Assessment work, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of sections 441 and 2478 of the Revised Statutes, as amended, (43 U.S.C. 1457 and 1201); section 2319 of the Revised Statutes, as amended (30 U.S.C. 22); sections 310 and 703(a) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 and 1740); and the acts October 5, 1992 (106 Stat. 1374), April 16, 1993 (107 Stat. 60), and August 10, 1993 (107 Stat. 312); parts 1820, 3730, 3820, 3830, and 3850, and subpart 3809, Groups 1800, 3700 and 3800, subchapters A and C, chapter II of title 43 of the Code of Federal Regulations are proposed to be amended as follows:

PART 3720—PUBLIC LAW 357; ENTRY AND LOCATION OF SOURCE MATERIALS UPON PUBLIC LANDS VALUABLE FOR COAL

1. Part 3720 is removed and reserved.

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL

2. The authority citation for part 3730 is revised to read as follows:

Authority: 69 Stat. 681, 30 U.S.C. 621–625; 43 U.S.C. 1701 *et seq.*; 106 Stat. 1374, 1378–1379; Public Law 103–66, title X, subtitle B, secs. 10101–10106, of the Act of August 10, 1993 (107 Stat. 312).

Subpart 3730—Public Law 359; Mining in Power Site Withdrawals: General

3. Section 3730.0–1 is revised to read as follows:

§ 3730.0–1 Purpose; lands open.

(a) The purpose of the Mining Claims Rights Restoration Act of August 11, 1955 (Act), is to permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development and other purposes, except for lands that:

(1) Are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or

(2) Are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission under an uncancelled preliminary permit which has not been renewed more than once.

(b) Locations made under the Act on lands withdrawn or reserved for power development within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant are also subject to the provisions of the Act of April 8, 1948 (62 Stat. 162). See subpart 3821 of this title.

4. Section 3730.0–3 is revised to read as follows:

§ 3730.0–3 Authority.

The authorities for the regulations in this part are the Act of August 11, 1955 (30 U.S.C. 621–625); section 314 of the Act of October 21, 1976 (43 U.S.C. 1744); Public Law 102–381, October 5, 1992 (106 Stat. 1374, 1378–79); and Public Law 103–66 (sections 10101–10106), August 10, 1993 (107 Stat. 312).

5. Section 3730.0–9 is amended by revising paragraph (a) to read as follows:

§ 3730.0–9 Information collection.

(a) The collections of information contained in subpart 3730 have been approved by the office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0110 and subsequently consolidated with 1004–0114. The information will enable the authorized officer to determine whether a mining claimant is qualified to hold a mining claim or site for the exploration, development, and utilization of minerals on all public lands that are withdrawn for power development. A response is required to obtain a benefit in accordance with the Act of August 11, 1955 (30 U.S.C. 621–625), Section 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–79), and the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 312).

* * * * *

Subpart 3734—Location and Assessment Work

6. Section 3734.1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 (a) and (b), shall file all notices or certificates of location, amended notices or certificates, and transfers of interest, with the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title, and pay the applicable rental, maintenance, location, and service fees required by subpart 3833 of this title. The notice, certificate, transfer, or amendment thereto shall be marked by the owner to indicate that it is being filed pursuant to the Act of August 11, 1955, the Act of April 8, 1948, or both, as required by § 3833.5(c). Failure to so mark the location certificate will delay the procedures to authorize mining under subpart 3736.

* * * * *

(c) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 shall perform and record annual assessment work if he or she qualifies as a small miner under § 3833.0–5(u) of this title or pay an annual maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site in lieu of the annual assessment work or Notice of Intent to Hold, pursuant to subpart 3833 of this title.

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

7. The authority citation for part 3800 is revised to read as follows:

Authority: 16 U.S.C. 447; 16 U.S.C. 347–354; 16 U.S.C. 460y *et seq.*; 16 U.S.C. 473, 478–482; 16 U.S.C. 1901, 1907; 30 U.S.C. 22 *et seq.*; 30 U.S.C. 122, 161, 162; 30 U.S.C.

242; 31 U.S.C. 9701; 43 U.S.C. 2; 43 U.S.C. 154; 43 U.S.C. 299, 300; 43 U.S.C. 1201; 43 U.S.C. 1474; 43 U.S.C. 1701 *et seq.*; 50 U.S.C. Appendix 565; 62 Stat. 162; 100 Stat. 3457–3468; 106 Stat. 1374, 1378–1379; 107 Stat. 60; and 107 Stat. 312.

Subpart 3809—Surface Management

8. Section 3809.0–3 is amended by adding new paragraph (e) to read as follows:

§ 3809.0–3 Authority.

* * * *

(e) The Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y–8), established the King Range Conservation Area in California. The Secretary is required under these Acts to manage activities in this conservation area under the General Mining Law of 1872 in such a manner as to protect the scenic, scientific, and environmental values against undue impairment, and ensure against pollution of streams and waters.

9. Section 3809.5 is amended by adding new paragraph (l) to read as follows:

§ 3809.0–5 Definitions.

* * * *

(*l*) *King Range Conservation Area* means the area designated pursuant to the Act of October 21, 1970 (16 U.S.C. 460y *et seq.*), as amended by section 602 of the Federal Land Policy and Management Act of 1976 (16 U.S.C. 460y–8).

10. Section 3809.1–4 is amended by adding new paragraph (b)(6) to read as follows:

§ 3809.1–4 Plan of operations: When required.

* * * * *

(b) * * *

(6) The area designated as the King Range Conservation Area pursuant to 16 U.S.C. 460y *et seq.*, as amended by section 602 of the Federal Land Policy and Management Act of 1976.

* * * * *

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

Subpart 3811—Lands Subject to Location and Purchase

11. Section 3811.2–2 is revised to read as follows:

§ 3811.2–2 Lands in national parks and monuments.

The Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), effectively withdrew all National Parks and Monuments from location and entry under the General Mining Law of 1872, as amended. Since September 28, 1976, all National Parks and Monuments and other units of the National Park System have been closed to the location of mining claims and sites under the General Mining Law of 1872, as amended. Valid existing rights are recognized, but access and permission to operate mining claims and sites within units of the National Park System are now governed by 36 CFR part 9.

12. Section 3811.2–3 is revised to read as follows:

§ 3811.2–3 Lands in Indian reservations.

All lands contained within the boundaries of an established Indian Reservation are withdrawn from all location, entry, and appropriation under the General Mining Law of 1872, as amended. All minerals on Indian Reservations may only be acquired by lease pursuant to the Act of May 11, 1938 (25 U.S.C. 396a), the Act of March 3, 1909 (25 U.S.C. 396), or the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*). The regulations governing the mineral leasing of Indian lands are found in 25 CFR Subchapter I.

13. Section 3811.2–8 is removed.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

Subpart 3821—O. and C. Lands

14. Section 3821.0–3 is revised to read as follows:

§ 3821.0–3 Authority.

The authorities for the regulations in this subpart are the Act of April 8, 1948 (62 Stat. 162); section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744); Public Law 102–381, October 5, 1992 (106 Stat. 1374, 1378–79); and sections 10101–10106 of Public Law 103–66, August 10, 1993 (107 Stat. 312).

15. Section 3821.2 is revised to read as follows:

§ 3821.2 Requirements for filing notices of locations of claims; descriptions.

The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3821.1 shall file all notices or certificates of location, amended notices or certificates, and transfers of interest in the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title and shall pay the applicable rental, maintenance, location, and service fees required by subpart 3833 of this title. The notice or certificate of location, or amendment thereto, shall be marked by the owner as being filed under the Act of April 8, 1948, and, if located on powersite lands, also the Act of August 11, 1955, as prescribed by §§ 3734.1 and 3833.5 of this title.

16. Section 3821.3 is revised to read as follows:

§ 3821.3 Requirement for filing statements of assessment work.

The owner of an unpatented mining claim, mill site, or tunnel site located on O. and C. lands shall perform and record proof of annual assessment work, or pay an annual rental or maintenance fee of $100 per unpatented mining claim, mill site, or tunnel site, pursuant to subpart 3833 of this title.

Subpart 3826—National Park Service Areas

Subpart 3826—[Removed & Reserved]

17. Subpart 3826 is removed and reserved.

Subpart 3827—King Range National Conservation Area.

Subpart 3827—[Removed & Reserved]

18. Subpart 3827 is removed and reserved.

PART 3830—LOCATION OF MINING CLAIMS

19. The authority citation for part 3830 is revised to read as follows:

Authority: 30 U.S.C. 22; 43 U.S.C. 1201; 31 U.S.C. 9701; 16 U.S.C. 1901, 1907; 43 U.S.C. 1740 and 1744; 30 U.S.C. 242; 50 U.S.C. appendix 565; 106 Stat. 1374, 1378–79; 107 Stat. 60; 107 Stat. 312.

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites; Payment of Service Charges, Rental, Maintenance, and Location Fees

20. Section 3833.0–1 is amended by revising paragraph (c) to read as follows:

§ 3833.0–1 Purpose.

* * * * *

(c) The payment in the same office of an annual rental or maintenance fee, if required, for each mining claim, mill site, or tunnel site held by the claimant,

* * * * *

21. Section 3833.0–3 is amended by revising the first sentence of paragraph (a), revising paragraphs (e) and (f), and adding new paragraphs (g) and (h) to read as follows:

§ 3833.0–3 Authority.

(a) Sections 314(a) and (b) of the Federal Land Policy and Management

Act (43 U.S.C. 1744) require the recordation of unpatented mining claims, mill sites, and tunnel sites, and the filing of information concerning annual assessment work performed or a notice of intention to hold mining claims in the proper BLM office within specified time periods.* * *

* * * * *

(e) The Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–79), and sections 10101–10106 of the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 312), require an annual rental or maintenance fee of $100 to be paid to the proper State Office of the Bureau of Land Management for each non-exempt mining claim, mill site, or tunnel site located or held under section 314(b) of FLPMA for the assessment years beginning on September 1, 1992, and ending on September 1, 1998. With certain exceptions provided in § 3833.1–6, this fee is in lieu of the requirement to perform and record annual assessment work under 30 U.S.C. 28–28e and section 314(a)(1) of FLPMA. Failure to pay the fee within the time limits prescribed by the Acts of October 5, 1992, and August 10, 1993, constitutes a statutory abandonment and forfeiture of the non-exempt mining claim, mill site, or tunnel site. Provisions relating to rental and maintenance fees and exemptions are contained in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7.

(f) Section 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C. 242) requires oil shale claim holders to pay an annual fee of $550 per oil shale claim, notwithstanding any other provision of law, including the Act of October 5, 1992. In addition, the Act of August 10, 1993, specifically states that the maintenance fee provision shall not apply to any oil shale claims for which a fee is required to be paid under section 2511(e)(2) of the Energy Policy Act of 1992. The $550 fee requirement for oil shale claims remains in effect. The $550 fee is first payable on or before December 31, 1993, and each December 31st thereafter.

(g) The Stockraising Homestead Act of December 29, 1916 (SRHA) (43 U.S.C. 299), as amended by the Act of April 16, 1993 (107 Stat. 60), provides that no person other than the surface owner may locate a mining claim on SRHA lands after October 13, 1993, until a notice of intent to locate has been filed with the proper BLM State office and the surface owner is notified of the filing.

(1)(i) When a notice of intent to locate a mining claim has been properly filed, no other person may, until 90 days after the date the notice of intent is filed:

(A) File such a notice with respect to any portions of the lands covered by the first notice;

(B) Explore for minerals or locate a mining claim on any portion of such lands; or

(C) File an application to acquire any interest in any portion of such lands pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(ii) The 90-day exclusive right may be extended by filing a Plan of Operations pursuant to subpart 3809 of this title. The extension runs until the BLM has approved or denied the Plan of Operations.

(2) The mining claimant may not enter the lands encompassed by a notice under the Act of April 16, 1993, until at least 30 days after he or she has properly notified the surface owner by registered or certified mail, return receipt requested.

(3) The Act of April 16, 1993, contains numerous other requirements prerequisite to a claimant engaging in mineral exploration and development activities on SRHA lands. These requirements are administered pursuant to subpart 3814 of this title.

(h) The Soldier's and Sailor's Relief Act of 1940 (50 U.S.C. appendix 565) excuses performance of assessment work by military personnel while they are on active duty, or within 6 months of their release from active duty, or during or within 6 months after their release from any period of hospitalization due to military injuries. The procedures for obtaining a waiver from the performance of assessment work may be found in subpart 3851 of this title.

22. Section 3833.0–5 is amended by revising paragraphs (e), (g), (m), (o), and (t), removing paragraph (v), redesignating existing paragraph (w) as paragraph (v), and adding paragraphs (w), (x), (y), (z), (aa), (bb), and (cc) to read as follows:

§ 3833.0–5 Definitions.

* * * * *

(e) *Owner or claimant* means the person who is, under State or Federal law, the holder of the right to sell or transfer all or any part of an unpatented mining claim, mill site, or tunnel site. The name of the owner and his or her current address shall be identified on all instruments required to be recorded or filed by the regulations in this subpart.

* * * * *

(g) *Proper BLM office* means the Bureau of Land Management State office listed in § 1821.2–1(d) of this title having jurisdiction over the land in which the claims or sites are located. In Alaska, the Northern District offices Records and Public Information Unit located in Fairbanks may also receive and record documents, filings, and fees for all mining claims, mill sites, and tunnel sites located in the State of Alaska.

* * * * *

(m) *File* or *filed* means being received and date stamped by the proper BLM office. For purposes of complying with §§ 3833.1–2, 3833.1–3, 3833.1–5, 3833.1–6, 3833.1–7, or § 3833.2, a filing or fee is timely if the required affidavit of assessment work or notice of intention to hold, or rental fee or maintenance fee, or maintenance fee waiver, is received within the time period prescribed by law, or, if mailed to the proper BLM office, is contained within an envelope clearly postmarked by the United States Postal Service within the period prescribed by law and received by the proper BLM State office within 15 calendar days subsequent to such period. (See § 1821.2–2(e) of this title if the last day falls on a day the office is closed).

* * * * *

(o) *Filing period* means the time period during which documents and fees are required to be provided to the proper BLM office. The time periods set forth in each statute are as follows:

(1) Except for filings and recordings required of a small miner qualifying for a waiver under § 3833.1–7 of this title, filings under FLPMA that would have been due on or before December 30, 1993, and each December 30 thereafter, are waived effective January 1, 1993, and so long thereafter as the Acts of October 5, 1992, and August 10, 1993, are in effect.

(2) Waivers from payment of maintenance fees and filings under sections 10101–10106 of the Act of August 10, 1993, shall be submitted by August 31, 1994, and each August 31 thereafter through and including August 31, 1998, under the conditions of that Act. See §§ 3833.1–6 and 3833.1–7.

(3) Rental and maintenance fees required by § 3833.1–5 are to be submitted to the proper BLM office by August 31, 1994, and each August 31 thereafter through and including August 31, 1998.

* * * * *

(t) *Rental fee* means the fee required by the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–79), to hold a mining claim, mill site, or tunnel site for the 1993 and 1994 assessment

years or that was newly located in either of those years.

* * * * *

(w) *Maintenance fee* means the annual $100 payment required by section 10101 of the Act of August 10, 1993 (Pub.L. 103–66, 107 Stat. 312), to hold and maintain a mining claim, mill site, or tunnel site. The maintenance fee is in lieu of the requirements for performing assessment work under 30 U.S.C. 28–28e and for filing an annual affidavit of labor or notice of intention to hold with the proper office of the Bureau of Land Management under 43 U.S.C. 1744(a) and (c) and § 3833.2. Under certain conditions provided in § 3833.1–6, a waiver of the payment of the $100 annual fee may be obtained. The requirement to pay a maintenance fee does not apply to any claim located after September 29, 1998. The maintenance fee requirements are governed by §§ 3833.1–5, 3833.1–6 and 3833.1–7.

(x) *Location fee* means the one time $25 payment required by section 10102 of the Act of August 10, 1993, for all new mining claims and sites located upon the public lands on or after August 11, 1993, and before September 30, 1998. The location fee shall be paid at the time the mining claim or site is recorded with the proper BLM office.

(y) *Related party* means, as defined in section 10101(d)(2) of the Act of August 10, 1993:

(1) The spouse and dependent children of the claimant as defined in section 152 of the Internal Revenue Code of 1986, or

(2) A person who controls, is controlled by, or is under common control with the claimant.

(z) *Control* means, as defined in section 10101(d)(2) of the Act of August 10, 1993, actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

(aa) *Forfeiture* means an act or failure to act that results in an unpatented mining claim, mill, or tunnel site being deemed to be either abandoned and void or null and void by operation of applicable law.

(bb) *Returnable* means that a check or negotiable instrument, including a valid credit card order, is received by the authorized officer but not yet processed through the accounting system of the Bureau of Land Management, and can be returned to the originator without processing of a refund check through the United States Treasury pursuant to § 3833.1–8.

(cc) *Refundable* means that a check or negotiable instrument, including a valid credit card order, has been processed through the accounting system of the Bureau of Land Management, and cannot be returned to the originator without the processing of a refund check through the United States Treasury pursuant to § 3833.1–8.

23. Section 3833.0–9 is amended by revising paragraph (a) to read as follows:

§ 3833.0–9 Information collection.

(a) The collections of information contained in subpart 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0114. The information will be used to enable BLM to record mining claims, mill sites, and tunnel sites; to maintain ownership records to those claims and sites; to determine the geographic location of the claims and sites recorded for proper land management purposes; and to determine which claims and sites their owner(s) wish to continue to hold under applicable Federal statute. A response is required to obtain a benefit in accordance with section 314 of FLPMA, as amended, the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–79), the Act of April 16, 1993 (Pub. L. 103–23, 107 Stat. 60), and the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 312).

* * * * *

24. Section 3833.1–2 is amended by adding paragraph (c) to read as follows:

§ 3833.1–2 Recordation of mining claims, mill sites, and tunnel sites located after October 21, 1976.

* * * * *

(c)(1) Beginning on October 13, 1993, mining claims cannot be located on lands patented under the Stockraising Homestead Act of 1916, as amended by the Act of April 16, 1993 (1707 Stat 60); until the claimant has first filed a notice of intent to locate with the proper BLM State Office and has served a copy of the notice upon the surface owner(s) of record, by registered or certified mail, return receipt requested.

(2) The claimant shall wait 30 days after such service before entering the lands to locate any mining claims on the Stockraising Homestead Act lands.

(3) The authorized officer will refuse to record any mining claim located on lands patented under the Stockraising Homestead Act, as amended, unless the claimant has complied with the requirements of this section, and such refused recording will be returned to the claimant without further action.

(4) The surface owner of land patented under the Stock-raising Homestead Act, as amended, is exempt from the requirements of this section.

(5) All mining claimants who have located mining claims on Stockraising Homestead lands are subject to the requirements of the Act of April 16, 1993. These additional requirements are found in subpart 3814 of this title.

25. Section 3833.1–3 is revised to read as follows:

§ 3833.1–3 Service charges, rental fees, maintenance fees, and location fees; form of remittance and acceptance.

(a) *Payment and acceptance policy.* All service charges, rental fees, maintenance fees, and location fees shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency and shall be made payable to the Department of the Interior—Bureau of Land Management, or by a valid credit card acceptable to the Bureau of Land Management. A check or negotiable instrument, including credit cards submitted for payment of charges and/or fees, for which payment is not honored by the issuing authority, and such refusal is not an error of the issuing authority, shall be deemed to be a nonpayment of the charges or fees for which the check or negotiable instrument, including a credit card order, was tendered. See § 3833.1–4(f) and (g) for payments made by credit cards or from Declining Deposit Accounts.

(b) *Recordation of new mining claims, mill sites, or tunnel sites with the Bureau of Land Management.* (1) New location notices or certificates submitted for recording pursuant to § 3833.1–2 that are not accompanied by full payment of the maintenance and location fees required by § 3833.1–4 or 3833.1–5 shall not be accepted and the submittal will be returned without further action by the authorized officer. The claimant may resubmit the filings with the proper payment of service charges and fees within the same 90 day filing period referred to in § 3833.1–2(a).

(2) Failure to provide full payment of service charges set forth in § 3833.1–4 will be curable for new location notices or certificates submitted for recording pursuant to § 3833.1–2 when the proper maintenance and location fees have been submitted. Such documents shall be noted as being recorded on the date received provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice that will be sent by the authorized officer. The claimant may resubmit the notices or certificates of location with the proper payment of service charges and fees within the same

90-day filing period referred to in § 3833.1–2(a). Failure to submit the proper service charge as provided in this paragraph will cause the new location notices or certificates to be rejected and returned to the claimant/owner.

(c) *Mining claims, mill sites, and tunnel sites recorded and serialized by the Bureau of Land Management.* (1) Failure to provide full payment of service charges set forth in § 3833.1–4 will be curable for documents and filings made pursuant to §§ 3833.2 and 3833.3 and amended locations filed under § 3833.1. Such documents and filings will be noted as being recorded on the date initially received provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper service charge as required by this paragraph will cause filings made pursuant to §§ 3833.2 and 3833.3 and amended locations filed under § 3833.1 to be rejected and returned to the claimant/owner. If a payment is received that partially covers the claims submitted, the payment shall be applied to claims in ascending numerical order of serialization.

(2) If a claimant fails to submit the proper rental or maintenance fees on or before each August 31, the authorized officer will apply the rental or maintenance fees received to existing recorded and serialized mining claims and sites in ascending numerical order of serialization, unless otherwise directed by the claimant. The authorized officer will note the deficient fees as being paid on the original date received, provided that the claimant submits the proper fees within 30 days of receipt of a deficiency notice from the authorized officer, if that much time remains before August 31. If there are less than 30 days before August 31, the correct fees shall be filed (see § 3833.0–5(m)) by such claimant on or before the August 31 deadline. Failure to submit the proper fees will cause the remaining claims or sites to be forfeited by the claimant/owner.

(3) After each August 31 payment deadline, if a claimant failed to file full payment of the proper rental or maintenance fees on time, the authorized officer will apply any rental or maintenance fees received to existing recorded and serialized mining claims and sites in ascending numerical order of serialization. Existing mining claims and sites to which no rental fee or maintenance fee can be applied because of the insufficiency of the funds paid to the authorized officer will be deemed null and void by operation of law, and therefore forfeited by the owner.

26. Section 3833.1–4 is amended by revising the section title; redesignating existing paragraphs (b) through (f) as (c) through (g), respectively; revising redesignated paragraphs (f) and (g); and adding a new paragraph (b), to read as follows:

§ 3833.1–4 Service charges and location fees.

* * * * *

(b) Each notice or certificate of location of a mining claim, mill site, or tunnel site that is located on or after August 11, 1993, and before September 30, 1998, shall, when submitted for recordation, be accompanied by a one time nonrefundable location fee of $25.00.

* * * * *

(f) The claimant/owner may authorize the BLM to charge payment of service charges, rental fees, maintenance fees, and location fees to his or her credit card under § 3833.1–3(a) by transmitting a facsimile authorization bearing the signature of the claimant/owner to the authorized officer, or the authorized officer may accept such authorization by telephone if the identity of the claimant/owner is established to the satisfaction of the authorized officer.

(g) The claimant/owner may also maintain a declining deposit account with the State Office of the BLM where the mining claims and sites are recorded for the payment of service charges, rental fees, maintenance fees, and location fees. The authorized officer may deduct the necessary service charges and fees from such account only at the direction of the claimant/owner.

27. Section 3833.1–5 is revised to read as follows:

§ 3833.1–5 Rental fees and maintenance fees.

Except as provided in §§ 3833.0–3(f), 3833.1–6, and 3833.1–8, each claimant shall pay a nonrefundable rental or maintenance fee of $100.00 for each mining claim, mill site, or tunnel site to the proper BLM office for each specified assessment year for which the claimant desires to hold the mining claim, mill site, or tunnel site. The assessment years covered by the Acts of October 5, 1992, and August 10, 1993, begin at 12 o'clock noon on September 1, 1992, and end at 12 o'clock noon on September 1, 1999. The $100 rental or maintenance fee requirement does not apply to oil shale placer claims. Oil shale placer claim holders shall pay an annual $550 fee for each oil shale claim as described in section 2511 of the Energy Policy Act of 1992 (30 U.S.C. 242). Payment of the rental fee for 1993 and/or 1994 shall satisfy any maintenance fee requirements that might otherwise apply for these years. The rental fee requirements for mining claims expire on September 30, 1994.

(a)(1) The initial $100.00 nonrefundable rental or maintenance fee for the assessment year in which the mining claim or site was located shall be paid for each mining claim, mill site, or tunnel site at the time of recording the mining claim, mill site, or tunnel site pursuant to section 314(b) of FLPMA and § 3833.1–2. In addition, the location fee required in § 3833.1–4(b) shall be paid at the time of recordation for all claims and sites located on or after August 11, 1993, and before September 30, 1998.

(2) The initial rental or maintenance fee described in paragraph (1) is not subject to the waiver provisions contained in §§ 3833.1–6 and 3833.1–7.

(b) Under the Act of August 10, 1993, a nonrefundable maintenance fee of $100.00 for each mining claim, mill site, or tunnel site shall be paid annually on or before August 31 for the subsequent assessment year beginning at 12 o'clock noon on September 1 of that year. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim or site for which the maintenance fee is being paid.

(c) There will be no proration of rental or maintenance fees for partial years of holding of mining claims, mill sites, or tunnel sites.

(d) A small miner may, under the exemption provisions of §§ 3833.1–6 and 3833.1–7, perform assessment work and file the affidavit of labor pursuant to § 3833.2 in lieu of paying the rental or maintenance fee.

(e) The owner of an oil shale placer claim shall pay the required $550 annual rental fee to the proper BLM State Office on or before each December 31.

(f) The payment of the required rental or maintenance fee for a mining claim, mill site, or tunnel site satisfies the requirement to file an affidavit of assessment work or a notice of intention to hold pursuant to § 3833.2.

(g) If an exempted mining claim or site is transferred in total to a party not entitled to an exemption, the exemption is forfeited for the mining claim or site transferred. The rental or maintenance fee for the exempted assessment year shall be paid for the mining claim or site transferred at the time of filing the transfer of interest under § 3833.3. If the proper fees are not submitted at the time of such filing, the authorized officer shall note the fees as being paid as of

the date of the filing, provided that the claimant submits the proper fees within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper fees will cause the claims or sites to be forfeited by the claimant/owner.

(h) The Secretary will adjust the location and maintenance fees every five years, based upon the Consumer Price Index (CPI) as published by the Bureau of Labor Statistics, Department of Labor. The Secretary may adjust the location and maintenance fees sooner, if he deems it reasonable, based upon changes in the CPI.

(1) Public notice of any adjustment of maintenance or location fees will be provided by July 1 of any year an adjustment is made.

(2) Any such adjustment of maintenance or location fees will apply to the first assessment year following the July 1 by which the notice was given. The new fee is due on August 31 of the same year in which the notice was given.

(i) The $100 annual maintenance fee applies to all mill sites and tunnel sites. A waiver of the maintenance fee may be obtained under special circumstances as provided in § 3833.1–6(a), (b), (c), and (d).

28. Section 3833.1–6 is revised to read as follows:

§ 3833.1–6 Maintenance fee waiver qualifications under the Act of August 10, 1993, and other exceptions—applicable from 12 o'clock noon on September 1, 1993, until 12 o'clock noon September 1, 1999.

A small miner may, under certain conditions described in this section and in § 3833.1–7, perform the assessment work required under 30 U.S.C. 28–28e and record it pursuant to section 314(a) of FLPMA and § 3833.2 in lieu of paying the maintenance fee. Assessment work shall conform to the requirements contained in subpart 3851 of this title.

(a) In order to qualify for a waiver of the maintenance fee requirements, a small miner shall meet all of the following conditions:

(1) The claimant and all related parties shall hold no more than 10 mining claims, mill sites, and tunnel sites, or any combination thereof, on Federal lands in the United States. For purposes of determining the small miner waiver, oil shale claims shall not be counted toward the 10 claim limitation for the small miner waiver to the $100 maintenance fee. A claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the maintenance fee in addition to filing for a small miner waiver.

(2) All mining claims and sites held by a claimant and all related parties shall be counted toward the 10 claim and site limit.

(3) Mill and tunnel sites of a qualified small miner, if listed upon the exemption certificate along with the affected lode and placer mining claims, are waived from payment of the $100 maintenance.

(b) Mining claims and sites that are undergoing final reclamation as approved by the authorized officer with no intent by the owner thereof to continue mining, milling, or processing operations upon or under the mining claims or sites, are excused from payment of the maintenance fees. The owner shall file a certified statement by August 31 in the proper BLM office attesting to the reclamation status of the affected mining claims and/or sites, with reference to a reclamation plan approved by the authorized officer, and to his or her intent to place them into permanent closure. A certified statement of such intent and reclamation shall be filed pursuant to § 3833.1–7. The number of mining claims or sites that may properly qualify for a reclamation waiver pursuant to this paragraph is not restricted to a 10-claim limit.

(c) Pursuant to the Soldier's and Sailor's Relief Act (50 U.S.C. appendix 565), military personnel on active duty status may, under certain conditions, qualify for an exemption from the performance of assessment work and the payment of maintenance fees. See §§ 3833.1–7(e)(2) and 3851.6 of this title.

(d) Under the following circumstances, a waiver may be obtained from the payment of the maintenance fee for mining claims and sites located upon National Park System lands:

(1) The claimant has received a declaration of taking or a notice of intent to take from the National Park Service pursuant to sections 6 and 7 of the Act of September 28, 1976, as amended (16 U.S.C. 1905, 1906) or the Act of December 2, 1980, as amended (16 U.S.C. 3192); or the claimant has otherwise been denied access by the United States to his/her mining claims or sites on National Park Service lands.

(2) The claimant shall file proof of the above conditions for exemption, attested to as a certified statement, pursuant to § 3833.1–7, with the proper BLM office by the August 31 immediately preceding the assessment year for which a waiver is sought.

(e) Payment of the maintenance fee for mining claims covered by a deferment of assessment work granted by the authorized officer pursuant to 30 U.S.C. 28(b)–(e) and subpart 3852 of this title may be deferred during the period for which the deferment is granted. Deferments are governed by the following conditions:

(1) If a petition for a deferment of assessment work, as required by § 3852.2 of this title, is filed with the proper BLM office on or before August 31 for a given year, the maintenance fee need not be paid on the claims listed in the petition for deferment until the authorized officer has acted upon the petition.

(i) If the petition is granted, maintenance fees for the claims are deferred for the upcoming assessment year. At the expiration of the deferment, all deferred fees shall be paid within 30 days of the end of the deferment, unless the claimant/owner qualifies as a small miner. If the claimant/owner qualifies as a small miner, all deferred assessment work shall be done as provided in § 3852.5 of this title prior to filing for a small miner waiver.

(ii) If the petition for deferment is denied by the authorized officer, the maintenance fees shall be paid within 30 days of receipt of the decision of the authorized officer denying the petition for deferment. Failure to pay the maintenance fees owed will result in the claims contained within the petition being forfeited.

(f) On mining claims for which an application for a mineral patent has been filed, and the mineral entry has been allowed, the payment of the maintenance fee is excused for the assessment years during which assessment work is not required pursuant to § 3851.5 of this title. However, no refund of previously deposited maintenance fees will be made to the mineral patent applicant.

29. Section 3833.1–7 is revised to read as follows:

§ 3833.1–7 Filing requirements for maintenance fee waivers.

(a) A small miner exemption certification previously filed for the assessment year ending at noon on September 1, 1994, under the Act of October 5, 1992, and the pertinent regulations in effect on August 31, 1993 will be considered proper certification for a waiver of payment of the maintenance fee due on August 31, 1994.

(b) The affidavit of assessment work performed by a small miner claiming a maintenance fee waiver shall be filed with the proper BLM office pursuant to § 3833.2 and shall meet the requirements of § 3833.2–4.

(c) To obtain the small miner's waiver for the assessment year ending at noon on September 1, 1994, the affidavit of assessment work for the period of September 1, 1993, through September 1, 1994, shall be filed on or before December 30, 1994, in the proper BLM office. The certified statement required by paragraph (d) for those who are not covered by a waiver under paragraph (a) of this section shall be filed in the proper BLM office on or before August 31, 1994, and shall contain all of the information required in paragraph (d). For mining claims and sites covered by a waiver, the filing of a certified statement pursuant to any of paragraph (d), (e), or (f) of this section will satisfy the requirements for filing of a notice of intention to hold pursuant to § 3833.2–5, when such notice of intention to hold is otherwise required.

(d) In order to hold mining claims or sites for the assessment year beginning at 12 o'clock noon on September 1, 1994, each small miner shall file a certified statement on or before August 31, 1994. Each small miner shall file a certified statement on or before August 31 each year thereafter to hold the claims each assessment year beginning at 12 o'clock noon on September 1 of the calendar year the certification is due, through August 31, 1998. The small miner shall support the claimed waiver for each assessment year a small miner's waiver is claimed, certified, and attested to under penalty of 18 U.S.C. 1001. The certified statement shall contain:

(1) The mining claim and site names and BLM serial numbers assigned to the mining claims and sites held by the small miner;

(2) A declaration by the claimant and all related parties that they own no more than 10 mining claims and sites in total nationwide on the date the waiver is due;

(3) A declaration that specifies that the assessment work requirements have been completed for the assessment year just ending;

(4) The names and addresses of all owners maintaining an interest in the mining claims and sites; and

(5) The signatures of all the owners of the mining claims and sites for which a waiver is claimed.

(e) Pursuant to the Soldier's and Sailor's Relief Act, and § 3851.6 of this title, a military person entering active service may file, or cause to be filed with the proper BLM office, a notice of his or her entry into active military service.

(1) The notice shall be filed in the assessment year that the person entered active duty status.

(2) The filing of the notice exempts the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed from release from a military hospital, whichever is later.

(3) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year next following the assessment year in which the person was released from active duty or a military hospital.

(4) The notice shall be filed as a certified statement pursuant to paragraph (d) of this section, and shall list all mining claims and sites affected by claim/site name and BLM serial number.

(f) Claimants holding claims that are excused from performance of assessment work by other statutes are also excused from payment of maintenance fees as part of their waivers. The claimant/owner shall file a certified statement pursuant to paragraph (d) of this section on or before each August 31 in the proper BLM office, identifying the statute that exempts the claims from assessment work.

30. Section 3833.1–8 is added to read as follows:

§ 3833.1–8 Refundability of service charges, location fees, rental and maintenance fees.

(a) Service charges submitted for new recordings under § 3833.1–2 are not returnable or refundable after the document received has been docketed and/or serialized.

(b) Service charges submitted with documents to be filed pursuant to §§ 3833.2 and 3833.3 are returnable or refundable if, at the time of submission, the affected mining claim or site is determined to be null and void or abandoned and void by operation of law.

(c) Rental fees, maintenance fees, and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were paid, to be null and void, abandoned and void by operation of law, or otherwise forfeited.

(d) Rental fees, maintenance fees, location fees, or service charges made in duplicate for the same claim or site are returnable or refundable. When the authorized officer receives a request for a return or refund of such fees or charges, and unless otherwise jointly instructed in writing by the paying parties, the authorized officer will refund the duplicate payment to the party submitting such duplicate payment.

(e) Voluntary actions such as relinquishment of claims or sites, or payment of rental or maintenance fees by a qualified small miner, shall not be a qualifying reason for obtaining a refund of such fees previously paid.

31. Section 3833.2–3 is amended by revising the section heading and paragraphs (d) and (e) to read as follows:

§ 3833.2–3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, the Act of October 5, 1992, and the Act of August 10, 1993.

* * * * *

(d) The Acts of October 5, 1992 and August 10, 1993, do not affect the requirements to do assessment work in the assessment year beginning at 12 o'clock noon on September 1, 1999, and ending at 12 o'clock noon on September 1, 2000, or to make annual filings on or before December 30, 2000, pursuant to §§ 3833.2 and 3851.1.

(e) For mining claims and sites located on or after September 1, 1998, and on or before September 30, 1998, and for which the required $100 maintenance fee was paid at the time of recording pursuant to section 314(b) of FLPMA and § 3833.1–2, payment of the maintenance fee satisfies the requirements of § 3833.2 for the 1999 calendar year.

32. Section 3833.2–6 is revised to read as follows:

§ 3833.2–6 When evidence or notice is not required.

Evidence of annual assessment work performed or a notice of intention to hold a mining claim or mill site need not be filed on unpatented mining claims or mill sites if mineral entry under a mineral patent application has been allowed. The owner of that mining claim or mill site is exempt from the filing requirements of § 3833.2 and the payment of rental or maintenance fees under § 3833.1–5 as of the date mineral entry is allowed.

33. Section 3833.3 is amended by adding paragraph (c) to read as follows:

§ 3833.3 Notice of transfer of interest.

* * * * *

(c) The filing of a transfer of interest, when properly executed and recorded under State law, is effective when recorded with the proper BLM office. For BLM record title purposes, the transfer will be deemed to have taken place on its effective date under State law.

34. Section 3833.4 is amended by revising the heading and paragraphs (a) and (b), redesignating paragraphs (c)

through (e) as (d) through (f), respectively, and adding paragraph (c), to read as follows:

§ 3833.4 Failure to file, or to pay rental, maintenance, or location fees.

(a)(1)(i) The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before the December 30 immediately following the August 31 by which the small miner filed for a waiver of payment of the rental or maintenance fees, shall conclusively constitute a forfeiture of the lode or placer mining claim.

(ii) Except for the filings required on or before December 30, 1992, beginning on October 5, 1992, the requirements of §§ 3833.2–1 through 3833.2–5 are modified by the requirements of the Acts of October 5, 1992, and August 10, 1993, and the Energy Policy Act of 1992, and these statutory provisions are now implemented in §§ 3833.1–5, 3833.1–6, and 3833.1–7.

(2) Failure to record the notice or certificate of location required by § 3833.1–2(a), § 3734.1(a), or § 3821.2 of this title, or failure to pay the rental, maintenance, or location fees required by §§ 3833.1–4, 3833.1–5, and 3833.1–7, or failure to file the documents required by § 3833.1–7(b) through (d) within the time periods prescribed therein for claimants who also fail to pay the maintenance fee, shall be deemed conclusively to constitute a forfeiture of the mining claim, mill site, or tunnel site.

(3) For claimants who also fail to pay the maintenance fee, failure by a claimant who has filed a waiver certification under § 3833.1–7 to perform the assessment work required by subpart 3851 of this title at the time of filing the waiver certification, if the work was required under § 3833.1–7(a) through (d), will result in the affected mining claims being conclusively deemed forfeited by the owner or owners thereof.

(4) Failure to list the 10 or fewer mining claims and/or sites for which the fee is waived on the applicable certification document filed pursuant to § 3833.1–6 or § 3833.1–7 or to pay the required amount of maintenance fees by the prescribed August 31 will result in the affected mining claims and/or sites being conclusively deemed forfeited by the owner or owners thereof.

(b) Failure to file the complete information required in §§ 3833.1–2(b), 3833.1–7(d) through (f), 3833.2–4(a), 3833.2–4(b), and 3833.2–5(c), when the document is otherwise filed on time, shall not be conclusively deemed to constitute an abandonment or forfeiture of the claim or site, but such information shall be submitted within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to submit the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed abandoned by the owner and therefore forfeited.

(c) Failure to record a transfer of interest under § 3833.3 will result in the Bureau of Land Management refusing to recognize the interest acquired by the transferee or to serve notice of any action, decision, or contest on the unrecorded owner.

* * * * *

PART 3850—ASSESSMENT WORK

35. The authority citation for part 3850 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28–28(e); 50 U.S.C. Appendix 565; 106 Stat. 1374, 1378–79; 107 Stat. 312.

Subpart 3851—Assessment Work: General

36. Section 3851.3 is amended by revising paragraph (c) to read as follows:

§ 3851.3 Effect of failure to perform assessment work.

* * * * *

(c) The Acts of October 5, 1992, and August 10, 1993, with certain exceptions for small miners, temporarily suspend and supersede the requirement to perform assessment work under § 3851.1, and require the payment of an annual $100 rental or maintenance fee per mining claim in lieu of the assessment work. For oil shale claims, the Energy Policy Act of 1992 (30 U.S.C. 242) suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual $550 rental fee per oil shale mining claim in lieu of the assessment work. The rental and maintenance fee requirements and exemptions from payment of the rental fee or waivers from the maintenance fee are described in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7 of this title.

37. Section 3851.4 is revised to read as follows:

§ 3851.4 Failure of a co-owner to contribute to annual assessment work; or to the payment of rental or maintenance fees.

(a) Upon the failure of any co-owner of a mining claim to contribute a proportion of the required expenditures, the co-owners who have performed the labor, made improvements, paid the rental or maintenance fee required under §§ 3833.1–5 and 3833.1–6 of this title, may, at the expiration of the year, give such delinquent co-owner personal notice of this failure. This notice must be given in writing, or such notice may be given by publication in the newspaper published nearest the claim for at least once a week for 90 days. If, upon the expiration of 90 days, after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute the proportionate share of such expenditures or improvements, such interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid.

(b) A claimant alleging ownership of a forfeited interest under paragraph (a) above who requests the authorized officer to change the ownership records of the affected mining claims shall present the following:

(1) Statement of the publisher of the newspaper as to the facts of publication, giving the beginning and ending dates of publication, a printed copy of the notice published, and a statement by the claimant that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute, or

(2) Evidence of personal service of the notice of delinquency upon the delinquent party. If personal service is effected by mail, the minimum sufficient evidence shall consist of a copy of the notice and a copy of the return receipt of the U.S. Postal Service evidencing receipt by the delinquent party of a registered or certified envelope containing the notice. If service was made in person, an affidavit of service signed and dated on the date of service will suffice as evidence of such service; and

(3) In all cases, a signed and dated statement by the claimant that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

(c) Upon determination by the authorized officer that paragraphs (a) and (b) of this section have been complied with, the record title of the mining claim shall be changed pursuant to § 3833.3 of this title. Such a change in ownership requires that the claimant submit the service charge required for a transfer of interest pursuant to § 3833.1–4 of this title.

(d) Active duty military personnel who give notice and comply with § 3851.6 are not subject to the provisions of this section.

38. Section 3851.5 is revised to read as follows:

§ 3851.5 Assessment work not required after allowance of mineral entry.

Performance of annual assessment work and payment of rental or maintenance fees is not required after the date that the mineral entry has been allowed.

(a) The assessment year in which the mineral entry is allowed by the issuance of the first half of the mineral entry final certificate is the first assessment year for which the assessment work and payment of rental or maintenance fees is no longer required, and assessment work is not required in any assessment year thereafter until a mineral patent issues.

(b) If a mineral entry is canceled in whole or in part, the mining claims and mill sites that are no longer covered by the mineral entry shall be subject to the assessment work requirement, or the payment of rental or maintenance fees, beginning in the next assessment year following the assessment year that the mineral entry was canceled.

39. Section 3851.6 is added to read as follows:

§ 3851.6 Assessment work not required for active duty military personnel.

Pursuant to the Soldier's and Sailor's Relief Act (50 U.S.C. appendix 565), a person entering active military service is exempt from the performance of annual assessment work under this subpart for each assessment year in which the service person is on active duty.

(a) To claim the exemption, the person entering active military service shall file, or cause to be filed with the proper BLM office, a notice of his or her entry into active military service. The notice shall be filed in the assessment year that the person entered active duty status.

(b) The filing of the notice exempts the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed from release from a military hospital, whichever is later.

(c) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year beginning at least 6 months after the date the person was released from active duty or a military hospital.

(d) The notice shall be filed as a certified statement pursuant to § 3833.1–7 of this title, and shall list all mining claims and sites affected by claim name and BLM serial number.

Subpart 3852—Deferment of Assessment Work

40. Section 3852.2 is amended by revising the first and second sentences in paragraph (a) to read as follows:

§ 3852.2 Filing of petition for deferment, contents.

(a) In order to obtain a deferment, the claimant shall file with the proper BLM office a petition in duplicate requesting such a deferment. No particular form of petition is required, but the applicant shall attach to one copy thereof a copy of the notice to the public required by 30 U.S.C. 28e showing that it has been filed or recorded in the local recording office in which the notices or certificates of location were filed or recorded.

* * * * *

40. Section 3852.3 is revised to read as follows:

§ 3852.3 Notice of action on petition to be recorded.

The claimant shall file or record in the local recording office in which he filed or recorded his notice of petition for deferment a copy of the order or decision of the BLM authorized officer disposing of the petition.

Dated: April 8, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–11346 Filed 5–10–94; 8:45 am]

BILLING CODE 4310–84–P

federal register

Wednesday
May 11, 1994

Part VIII

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 925
Olympic Coast National Marine Sanctuary Regulations; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 925

[901064-0264]

RIN 0648-AC63

Olympic Coast National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of National Marine Sanctuary Designation; final rule; and summary of final Management Plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), by the Designation Document contained in this document, and as required by section 205(a)(4) of Public Law No. 100-627, designates an approximately 2,500 square nautical mile area of coastal and ocean waters, and the submerged lands thereunder, off the Olympic Peninsula of Washington State, including the waters of the Strait of Juan de Fuca eastward to Koitlah Point, as the Olympic Coast National Marine Sanctuary (Sanctuary). This document publishes the final Management Plan detailing the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance, activities for the Sanctuary.

Further, NOAA, by this document, issues final regulations to implement the designation by regulating activities affecting the Sanctuary consistent with the provisions of the Designation Document. The intended effect of these regulations is to protect the conservational, recreational, ecological, historical, research, educational, and aesthetic resources and qualities of the Sanctuary.

EFFECTIVE DATES: Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1434(b)), the Governor of the State of Washington has 45 days of continuous session of Congress beginning on the day on which this notice is published to review the designation and regulations before they take effect. After 45 days, the designation and regulations automatically become final and take effect. However, if the Governor of the State of Washington certifies within the 45-day period to the Secretary of Commerce that the designation or any of its terms are unacceptable, the designation or the unacceptable terms cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State. If the Secretary considers that such disapproval will affect the designation in a manner that the goals and objectives of the Sanctuary cannot be fulfilled, the Secretary may withdraw the designation. A document announcing the effective date will be published in the **Federal Register**.

ADDRESSES: Copies of the Final Environmental Impact Statement and Management Plan (FEIS/MP) prepared for the designation are available upon request from the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East West Highway, Silver Spring, MD 20910, (301) 713-3125.

FOR FURTHER INFORMATION CONTACT: Nina Garfield, (301) 713-3141.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303 of the Marine Protection, Research, and Sanctuaries Act, as amended (the "Act" or "MPRSA"), 16 U.S.C. 1433), provides that the Secretary may designate any discrete area of the marine environment as a National Marine Sanctuary if the Secretary determines that such designation will fulfill the purposes and policies of the Act as set forth in section 301(b) (16 U.S.C. 1431(b)) and finds that:

(1) The area is of special national significance due to its resource or human-use values;

(2) Existing state and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(3) Designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and

(4) The area is of a size and nature that will permit comprehensive and coordinated conservation and management.

The authority of the Secretary to designate national marine sanctuaries and administer the other provisions of the Act has been delegated to the Under Secretary of Commerce for Oceans and Atmosphere by DOC Organization Order 10-15, section 3.01(z), January 11, 1988. The authority to administer the other provisions of the Act has been re-delegated to the Assistant Administrator of NOAA for Ocean Services and Coastal Zone Management by NOAA Circular 83-38, Directive 05-50, September 21, 1983, as amended.

The coastal and ocean waters off the Olympic Coast were recognized for their high natural resource and human use values and placed on the National Marine Sanctuary Program Site Evaluation List (SEL) in August of 1983 (48 FR 35568). In 1988, Congress reauthorized and amended the Act and directed the Secretary to designate the Olympic Coast National Marine Sanctuary (Pub. L. 100-627, section 205(a)). In report language accompanying this legislation, Congress noted that the Olympic Coast possesses a unique and nationally significant collection of flora and fauna, and that adjacency of the area to the Olympic National Park merits the designation of this area as a national marine sanctuary (H. Rep. No. 4210, 100th Cong., 1st. Sess., 1988).

NOAA held four scoping meetings in Washington State April 10-13, 1989, to solicit public comments on the designation: Aberdeen on April 10, Port Angeles on April 11, Forks on April 12, and Seattle on April 13 (45 FR 10398, March 13, 1989).

On September 20, 1991, NOAA published a proposed Designation Document and proposed implementing regulations and announced the availability of the Draft Environmental Impact Statement/Management Plan (DEIS/MP) (56 FR 47836). Public hearings to receive comments on the proposed designation, proposed regulations, and DEIS/MP were held on November 6th in Port Angeles, November 7th in Seattle, November 12th in Olympia, November 13th in Aberdeen, November 14th in Seaview, and November 20th in Washington DC. On November 14th, 1991, the period for submitting public comments was extended from November 27th, 1991 to December 13th, 1991 pursuant to requests from the State of Washington and the coastal counties (56 FR 57869). All comments received by NOAA in response to the **Federal Register** notice and at the public hearings were considered and, where appropriate, incorporated in the final regulations and FEIS/MP. A summary of the comments on the proposed regulations and the regulatory elements of the DEIS/MP and NOAA's responses to them follow.

II. Comments and Responses

Issue: Boundaries

Boundary Alternative 1

Comment: NOAA should choose boundary alternative 1 because: (1) it contains most of the unique ecological features off the Washington Coast; (2) NOAA can offer greater protection to the coastal features than the resources further offshore in the event of a spill of hazardous materials; and (3) vessel traffic would be least affected, thereby ensuring safer seas.

Response: NOAA disagrees. Boundary alternative 1 contains most of the ecological features visible above the sea surface. However, a marine sanctuary should encompass a discrete ecological unit with definable boundaries (16 U.S.C. 1433 (b)(1)(F)). The marine mammals and seabirds that transit the waters off the Olympic Peninsula and colonize the offshore rocks and islands forage in the rich waters and benthic communities over and on the continental shelf. The shelf is broad off the Strait of Juan de Fuca. The seaward extent of the shelf coupled with the upwelling produced from the Juan de Fuca Canyon are the physical parameters that support the food chain from the plankton to the marine mammals and seabirds. The offshore rocks and intertidal communities are only one habitat within the marine ecosystem off the Olympic Coast. Therefore, the marine sanctuary should encompass the ecologically significant offshore waters.

With respect to NOAA's ability to protect the offshore waters in the event of a spill, NOAA agrees that there is little that can be done once a spill has occurred. The high seas would most likely render response capabilities ineffective. However, NOAA will coordinate with the U.S. Coast Guard, the Washington State Office of Marine Safety, and the coastal tribes to ensure that there is an adequate response capability for the coastal waters, intertidal regions, and beaches along the sanctuary including seabird and marine mammal rescue capabilities.

Extension of the Sanctuary boundary to the shelf edge provides a buffer area for protecting the coastal resources. NOAA is working with the U.S. Coast Guard to develop a proposal for an Area to be Avoided (ATBA) from the shoreward boundary to 25 nautical miles offshore of the Olympic Peninsula. This ATBA is designed to provide sufficient time to respond to a vessel that loses power off the Olympic Peninsula. The ATBA is compatible with many of the existing voluntarily adhered to traffic patterns along the coast and thus adds only minimal time and distance to transits between the Strait of Juan de Fuca and destinations to the south.

Boundary Alternative 2

Comment: NOAA should choose boundary alternative 2 as the preferred alternative.

Response: NOAA disagrees for the same reasons stated in response to the previous comment. The seaward extent of boundary alternative 2, which approximates the 50 fathom isobath, has no relation to the seaward extent of the coastal ecosystem.

Boundary Alternative 3

Comment: NOAA should choose boundary alternative 3 as the preferred alternative.

Response: Boundary Alternative 3 excludes the Juan de Fuca Canyon, which is one of the richest regions of the offshore oceanic ecosystem. It also excludes some of the highest concentrations of human uses which threaten the health of the marine ecosystem off the Olympic Peninsula.

Comment: NOAA should not choose boundary alternative 3 as the preferred alternative because it will be too restrictive for vessel traffic.

Response: NOAA is proposing no regulations that will unduly restrict vessel traffic. (See response to comment on boundary alternative 1).

Boundary Alternative 4

Comment: NOAA should select boundary alternative 4 as the preferred alternative because:

(1) Many of the unique unspoiled ecological resources that might be significantly impacted by oil are located in the physically complex area north of Pt. Grenville including areas of submarine canyons, productive fishing grounds, and coastal features that are critical habitat;

(2) Sanctuary status in the southern portion of the study area would conflict with state managed activities such as dredged material disposal, while most of the shoreline in the north has little commercial activity; and

(3) NOAA can enlarge the boundary in the future.

Response: NOAA agrees. One of the most valuable qualities of the Olympic Peninsula is that it is undeveloped and relatively pristine. NOAA recognizes that the southern portion of the boundary is much more developed, especially with respect to the harbor maintenance activities in Grays Harbor. Further, the rocky intertidal habitats in the north are much more sensitive to pollution from oil and gas compared to the sandy beach environments in the southern portion of the study area. In the event of a spill of hazardous materials, experts predict that it would take years for intertidal communities of rocky intertidal environments to become reestablished, whereas it would take an order of months for the sandy intertidal communities to recolonize. Lastly, NOAA can expand Sanctuary boundary 4 in the future, in accordance with the requirements of the Marine Protection, Research, and Sanctuaries Act (MPRSA), the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA), if deemed necessary.

Comment: NOAA should not choose boundary alternative 4 because:

(1) It is not scientifically defensible for it fails to protect the important and environmentally delicate estuaries along the southern coast;

(2) It would render ineffective NOAA's resource monitoring and sanctuary enforcement mandates; and

(3) It will be too restrictive for vessel traffic.

Response: The boundary of a marine sanctuary should approximate the most identifiable boundaries of a marine ecosystem. The Site Evaluation List (SEL), from which sites are selected for consideration as marine sanctuaries, identified the coastal offshore islands as the core of the proposed Olympic Coast National Marine Sanctuary (originally identified as the Western Washington Outer Coast). With this focus, NOAA has determined that the boundaries of the ecosystem are encompassed by boundary alternative 4. NOAA recognizes that the coastal estuaries are ecologically valuable and that many organisms that exist within, or transit through boundary alternative 4, depend on the estuaries. However, while the estuaries and outer coast are ecologically linked, the productivity of the two environments is a function of very distinct environmental processes.

NOAA believes that protection of the estuaries could be best achieved through possible inclusion of these areas in programs targeting estuarine management such as, the National Estuarine Research Reserve System, the National Estuary Program, or the Coastal Zone Management Program.

NOAA believes that the size of the sanctuary encompassed by boundary alternative 4 is manageable with respect to research and monitoring initiatives.

As discussed above, NOAA is working with the U.S. Coast Guard to develop a proposal for an ATBA off the northern Olympic Peninsula. It is designed to be as compatible with

existing customary practices among mariners as possible. NOAA is not promulgating vessel traffic regulations with designation.

Boundary Alternative 5

Comment: NOAA should choose boundary alternative 5 because:

(1) Activities that are, or could occur, in the southern portion of the study area can affect the resources in the north;

(2) The entire study area is ecologically connected;

(3) The management needs are greatest in the south;

(4) The sanctuary management regime would complement existing management initiatives (Willapa Bay watershed planning processes, Columbia and Snake River Salmon Recovery Planning, State National Heritage Plans); and

(5) Expansion of the Sanctuary boundary in the future will be too time-consuming.

Response: NOAA's preferred boundary alternative is based on an ecologically identifiable boundary. The northern and southern portions of the study area are distinct with respect to their coastal and offshore ecology. NOAA can protect Sanctuary resources from outside activities through the prohibition on discharges outside the Sanctuary boundary that enter and injure Sanctuary resources. NOAA will be involved in planning activities that could potentially threaten Sanctuary resources outside its boundary. The boundary can be expanded in the future if needed.

Comment: NOAA should not choose boundary alternative 5 because it is not necessary to encompass the entire Washington coastline as a marine sanctuary, and it would eliminate any future development of the coastal areas.

Response: NOAA agrees. See response to previous comment.

Comment: A more detailed analysis of the impacts of sanctuary designation must be undertaken before seriously considering boundary alternative 5.

Response: NOAA has undertaken an extensive analysis of the uses and ecology of the southern portion of the study area and believes that the ecologically sensitive estuarine environments are adequately protected.

Alternative Boundary Suggestions

Comment: NOAA should establish a series of smaller site-specific areas surrounding unique marine resources, such as ocean waters immediately adjacent to already protected terrestrial ecosystems such as wildlife refuges and the Olympic National Park. This alternative would afford sanctuary status to marine resources while maintaining provisions for compatible ocean uses.

Response: NOAA disagrees. Smaller site-specific areas would not encompass an ecosystem for the reasons stated above. Further, designation of the marine sanctuary would allow for the continuation of pre-existing and compatible uses.

Comment: NOAA's analysis of the resources within the study area identified the southern portion as highly important in terms of wildlife and fishery values, particularly the areas in and surrounding Willapa Bay. NOAA should consider modifying boundary alternative 4 by adding a satellite site encompassing the estuarine environment and the offshore waters of Willapa Bay.

Response: NOAA's analysis confirmed that the estuarine areas in the southern portion of the study area are significant natural resources and that many of the resources utilize the waters off the northern coast as well. However, NOAA has determined that the estuarine ecosystems are distinct from the higher energy marine environment of the northern portion of the study area. In addition, the activities in, and adjacent to Grays Harbor are managed pursuant to an existing estuarine management plan promulgated pursuant to the Washington State Shorelands Management Act. The residents living in the watersheds of Willapa Bay are currently preparing an estuarine management plan.

Comment: NOAA should consider the creation of a north and south Olympic Coast National Marine Sanctuary with separate but coordinated management regimes.

Response: The Act requires the designation of one sanctuary on the Western Washington Outer Coast with the offshore Islands and coastal areas of the northern Olympic Peninsula as the core area of the sanctuary. In carrying out this mandate, NOAA examined the seaward, northerly, southerly, and easterly extent of the ecosystem that has as its core the intertidal communities of the outer coast.

Comment: The boundary of the Sanctuary should be modified as further cetacean information is available.

Response: NOAA can modify the boundary in the future, in accordance with the requirements of the MPRSA, the NEPA and the APA, as more information becomes available.

Modification of the Western Boundary

Comment: The outer boundary of the sanctuary should extend westward to a point that minimizes restrictions and needless re-routing of vessel traffic and harbor maintenance activities at the opening of Grays Harbor. To accomplish this objective, the outer limit of the sanctuary should be set at a distance between 2 and 10 miles from shore.

Response: Sanctuary boundaries are not established based on vessel traffic routes, particularly because routes are subject to change. NOAA will work with existing regulatory agencies to minimize impacts. While vessel traffic is in the scope of sanctuary regulations, NOAA is not promulgating vessel traffic regulations at this time.

Comment: The outer boundary should be established at either the 100 or 500 fathom isobath.

Response: NOAA has established the boundary at the 100 fathom isobath because it is generally recognized to be the seaward extent of the continental shelf, the area where photosynthetic activity is greatest.

Comment: Clarify the rationale for establishing the western boundary of alternatives 4 and 5.

Response: See response to previous comment.

Modification of the Shoreline Boundary

Comment: The shoreline boundary should be established at the lower low water mark to preclude interference with carefully crafted beach management plans regulating beach traffic, razor clam harvests and emergency aircraft landings.

Response: The shoreline boundary of the Sanctuary is located at the higher high water line where adjacent to Federally-owned land (including the Olympic National Park and the U.S. Fish and Wildlife refuges) and the lower low line mark when adjacent to State-owned land. Thus, the boundary does not interfere with beach management plans. Razor clam harvests within the intertidal zone of the Sanctuary will be managed by existing authorities such as the Washington State Department of Natural Resources, the Quinault Indian Tribe, and the National Park Service. Emergency aircraft landings are permissible in the Sanctuary.

Comment: The shoreline boundary should cut across the mouths of all rivers, streams and estuaries because there are sufficient management plans in place providing protection of inland environments such as the Washington State Coastal Zone Management Program and the Grays Harbor Estuary Management Plan.

Response: The shoreline boundary of the Sanctuary has been modified to cut across the mouths of all rivers, streams and estuaries.

Comment: Clarify why the shoreward boundary distinguishes between adjacency to tribal and non-tribal lands.

Response: The Tribes have jurisdiction to the mean lower low water line. Both the Tribes and the State have requested that the Sanctuary boundary not overlap with tribal and State lands. Therefore, the coastal boundary has been modified so that it is at mean lower low water when adjacent to tribal and State owned lands and at mean higher high water when adjacent to Federally owned lands.

Comment: Existing National Park Service standards, regulations, and policies must not be diminished as a result of dual designation as a National Park and National Marine Sanctuary. The majority of the intertidal areas of the Olympic National Park are Federally designated Wilderness Area and must be managed accordingly.

Response: The Sanctuary boundary overlaps with the boundary of the Olympic National Park. NOAA will not diminish the standards, regulations and policies currently applying to the intertidal areas of the Olympic National Park. The existing standards, regulations and policies of the intertidal areas will remain. NOAA will enhance the protection of these intertidal areas by working with the Coast Guard to ensure a safer vessel traffic environment, and the upland users of the watershed to monitor and minimize the impacts of non-point source pollution. Additionally, NOAA will support research and resource monitoring initiatives in the intertidal areas and may seek compensation for damages if an accident were to occur that injures Sanctuary resources.

Inclusion of the Strait of Juan de Fuca

Comment: The northeastern boundary of the sanctuary should extend further into the Strait of Juan de Fuca to either: (1) The Lyre River; (2) the Clallam County Marine Sanctuary at Salt Creek; (3) Low Point; (4) Crescent Bay/Agate Beach; or (5) Pillar Point. Omission of the Strait of Juan de Fuca from the Sanctuary excludes the head of the Juan de Fuca Canyon from the boundary of the Sanctuary, and thus represents a boundary not based upon an ecological rationale.

Response: NOAA has examined the resources of the Strait of Juan de Fuca and the FEIS/MP has been revised accordingly. Sections III and IV (Alternatives, and Environmental Consequences) examine the benefits and consequences of various alternatives in the Strait of Juan de Fuca. NOAA believes that the existence of a functional biotic community characteristic of the marine environment extends into the Strait of Juan de Fuca to Observatory Point. Eastward of Observatory Point, the ecosystem is more characteristic of an estuarine environment.

Despite the ecological arguments that support inclusion of the Strait of Juan de Fuca in the Sanctuary boundary, NOAA does not believe that the public has had ample opportunity to analyze and comment on the proposal to add the Strait. Since the Strait of Juan de Fuca lies entirely in state waters, the Strait of Juan de Fuca cannot be included without the approval of the Governor of Washington State. However, NOAA will pursue expanding the boundary if supported by the State of Washington.

Comment: The boundary of the Sanctuary should be contiguous with that of the proposed Northwest Straits Sanctuary. A gap between these two proposed sanctuaries would cause confusion for commercial shipping and fishing interests and government managing agencies.

Response: At this time, the future and nature of the proposed Northwest Straits National Marine Sanctuary is uncertain and cannot serve as a deciding factor in the determination of the eastern boundary of the Olympic Coast National Marine Sanctuary. The boundary of the Olympic Coast National Marine Sanctuary must be determined based on ecological and human use factors. NOAA can modify the boundary in the future if it is deemed appropriate. NOAA will coordinate with existing managing agencies to ensure that the Olympic Coast National Marine Sanctuary and the proposed Northwest Straits National Marine Sanctuary do not unduly disrupt the management of vessel traffic and fishing.

Comment: The boundary of the Sanctuary should not encompass the waters of the Strait of Juan de Fuca because closely-monitored vessel traffic lanes already exist.

Response: The MPRSA encourages multiple uses of the Sanctuary as long as they are compatible with the resource protection goals of the Sanctuary. Clearly, the Coordinated Vessel Traffic System in the Strait of Juan de Fuca is in the best interest of the vessel traffic industry and the environment. NOAA would not interfere with the vessel traffic management regime in the Strait of Juan de Fuca if the Governor of the State of Washington supported inclusion of the Strait of Juan de Fuca in the Sanctuary boundary.

Northern Boundary

Comment: The northern boundary of the Sanctuary should be adjacent to the international border and include vessel traffic lanes to facilitate the establishment of a cooperative international sanctuary and coordinated vessel traffic management regime.

Response: The northern boundary is adjacent to the international boundary.

Inclusion of the Estuaries

Comment: NOAA recognized both the high resource values of the estuaries and the high level of point source discharges. By including the estuaries in the boundary NOAA would be in a position to work with the Washington Department of Ecology (WDOE) to correct the sources of pollution.

Response: NOAA has been working with the Washington Department of Ecology to address pollution problems in the coastal estuaries. The Grays Harbor Estuary Management Plan was supported by funding provided pursuant to the Washington Shorelands Management Act. NOAA agrees that the estuaries are extremely valuable environments with high levels of point source discharges. However, NOAA believes that the estuaries are ecologically distinct from the offshore waters of the Olympic Peninsula, which is the core area of the Sanctuary. Inclusion in the National Estuarine Research Reserve System (NERRS) is a more appropriate management framework for NOAA involvement in estuarine management.

Comment: The estuaries should be excluded from the Sanctuary boundary because the Washington State Coastal Zone Management Program and the Grays Harbor Management Plan offer sufficient protection to the estuaries.

Response: NOAA agrees. The estuaries are excluded from the preferred boundary of the Sanctuary.

Consideration of Other National Marine Sanctuaries and National Estuarine Research Reserves (NERRS)

Comment: Some commenters believed that NOAA should designate the estuaries as NERR's if they are not included in the boundary of the Sanctuary because of their natural resource values. Other commenters believed that NERR status is inadequate since it does not include the marine environment. Clarification is needed on the specific elements of the NERRS:

(1) The degree of protection that the NERRS would provide to Grays Harbor and Willapa Bay;

(2) The process of designation;

(3) Timetable for designation;

(4) Assurances that designation would occur; and

(5) The degree of protection to the estuaries that would be provided in comparison to sanctuary status.

Response: The terms of designation as a NERR are determined between the State and NOAA. The process begins with the nomination of an estuary, or portion thereof, to NOAA for inclusion in the NERRS by the Governor of the State. The State holds scoping meetings in the region nominated for inclusion to solicit public input. The State then prepares a draft environmental impact statement and management plan (DEIS/MP) where boundary, management, and regulatory alternatives are assessed and a preferred alternative is decided upon. The DEIS/MP must demonstrate that the key core land and water areas are adequately protected by the state. Once the DEIS/MP is completed, public hearings are held in the region. After a comment period of one month, the State must produce a Final Environmental Impact Statement/Management Plan (FEIS/MP) incorporating the public comments. Once NOAA approves the FEIS/MP the Reserve is officially designated. The entire process requires approximately three years. Designation is contingent upon available funding.

Comment: NOAA should encourage sanctuary designations in Northern Puget Sound, Hood Canal, Southern Oregon and Northern California.

Response: NOAA is working with the State of Washington to study the feasibility of a sanctuary in Northern Puget Sound. New candidates for sanctuary status are selected from NOAA's SEL. Sites in southern Oregon and Northern California are presently on the SEL.

Harbor Exclusion/Inclusion

Comment: How will sanctuary designation influence the disposal of dredge material from harbor maintenance and development activities that occur in the Port of La Push, the mouth of the Quilleute River, and Neah Bay?

Response: No dredge spoil disposal will be permitted within the Sanctuary, except when used in connection with beach nourishment projects related to harbor maintenance activities. Harbors are excluded from the Sanctuary boundary. Therefore, maintenance and development activities can occur, but disposal of dredge material must be either on land or outside the boundary of the Sanctuary.

Growth Management

Comment: The Sanctuary should help to limit population growth.

Response: The sanctuary program has no control over population growth adjacent to the Sanctuary boundary. Rather, the program exists to ensure that human uses resulting from growth do not have a negative impact on Sanctuary resources.

Comment: Private land owners should not lose development rights to their land, nor should they have the value of their land significantly decreased by regulation without due compensation for that loss.

Response: NOAA is issuing no regulations that will diminish the development rights of private property owners.

Opposition to Sanctuary Designation

Comment: The marine sanctuary should not be designated because: (1) It would shut down the fishing industry; (2) existing legislation and management regimes offer adequate protection; (3) potential industrial interests would be stifled because the sanctuary would over-regulate the local economy and its growth; (4) the ecological/aesthetic values of Washington's coastline are not permanently threatened; (5) local airports in Aberdeen and Ocean Shores would close due to insurance problems; and (6) the Olympic National Park has too much control over the Olympic Peninsula already.

Response: The Sanctuary will not shut down the fishing industry. Fishing is not within the scope of Sanctuary regulation; the regulation of fishing would remain with existing management regimes. Further, the Sanctuary will ensure greater protection from risks due to oil, gas and mineral development and vessel traffic accidents.

NOAA disagrees that existing legislation offers adequate protection of the offshore resources. The threats from such things as vessel traffic, oil and gas development, sand and gravel mining and Navy practice bombing of Sea Lion Rock have not been addressed through a comprehensive management regime that recognizes the value and fragility of the marine ecosystem off the Olympic Peninsula. NOAA does not believe that the Sanctuary will over-regulate the local economy since the main source of income in the region is from tourism, fishing and timber production-none of which will be negatively affected by the Sanctuary. Tourism and fishing will likely benefit from Sanctuary status due to the increased protection of the marine environment.

Issue: Alteration of/or Construction on the Seabed

Comment: The regulation pertaining to alteration or construction of the seabed may be interpreted as prohibiting such activities as geologic research, the placement of current meters, sediment traps and similar research equipment, all of which might be necessary if environmental studies were to be conducted in the Mineral Management Service (MMS) Washington-Oregon planning area. To clarify the intent of this prohibition, "Government sponsored environmental studies" should be added in the second sentence of this section as one of the activities for which this prohibition does not apply.

Response: NOAA supports research within the Sanctuary. However, the prohibition on alteration of, or construction on the seabed applies to all research activities, including those conducted by governmental agencies. All research activities conducted within the Sanctuary that violate a Sanctuary regulation must be undertaken pursuant to a Sanctuary research permit to ensure that the impacts from the research are minimal and temporary.

Comment: The prohibition on the alteration of, or construction on the seabed should not interfere with current or future harbor maintenance or fishing activities including: (1) Jetty and groin construction; (2) permitted dredging of channels and harbors; (3) the use of dredge spoils for underwater berm construction; (4) construction and improvement of boat launching and marine facilities adjacent to reservations; (5) the retrieval of fishing gear (including crab pots) and sunken vessels; (6) bottom trawling and scallop dredging; and (7) tribal fin and shellfish operations. NOAA needs to clarify the exemption of activities incidental to routine fishing and vessel operations. The exemptions for harbor maintenance and fishing activities should read: "attempting to alter the seabed for any purpose other than anchoring vessels, normal fishing operations to include commercial bottom trawling and crab pot recovery, and routine harbor maintenance."

Response: Ports and harbors are not included within the boundary of the Sanctuary. The boundary of the Sanctuary adjacent to the Port of La Push is congruent with the Colreg lines at the mouth of the harbors. Further, there is the following exception to the alteration-of-the-seabed regulation: "Harbor maintenance in the areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties." The noted activities incidental to fishing have been

exempted from the Sanctuary regulations.

Comment: NOAA should prohibit all dredging and removal of sand and gravel within the Sanctuary boundary.

Response: NOAA has prohibited all dredging and removal of sand and gravel within the Sanctuary boundary except as an incidental result of harbor maintenance activities. These activities threaten the integrity of the benthic community and the food source of many fish, marine mammals and seabirds.

Comment: NOAA should not subject the exploration and development of offshore mineral activities to the same restrictions proposed for the exploration and development of Outer Continental Shelf (OCS) oil and gas.

Response: All of these activities injure the benthic communities in the Sanctuary and NOAA does not believe that there is cause for exceptions.

Comment: Clarify NOAA's policy on establishing artificial reefs within the Sanctuary.

Response: There are no artificial reefs in the Sanctuary as of the date of designation. The creation of new artificial reefs would be prohibited pursuant to the prohibition on alteration of, or construction on, the seabed.

Comment: NOAA should prohibit the construction of pipelines on the sea floor.

Response: The regulation prohibiting the alteration of, or construction on, the seabed would prohibit the construction of pipelines on the sea floor.

Issue: Cultural and Historic Resources

Comment: NOAA should prohibit moving, injuring, or possessing historic resources within the Sanctuary.

Response: NOAA agrees that it is necessary to protect and manage historical and cultural resources within the Sanctuary boundary. NOAA has included a prohibition on moving, removing, possessing, injuring, or attempting to move, remove, or injure these resources, except as resulting incidentally from traditional fishing operations. If NOAA determines that fishing activities are resulting in injury to Sanctuary historic and cultural resources, NOAA may amend the Sanctuary regulations to abolish the exemption for these activities.

Comment: The proposed regulations dealing with cultural resources fail to preserve the tribes' ability to control access to, and removal of, their cultural heritage. Therefore, NOAA should add a new § 925.5(a)(8) prohibiting: "removal or attempted removal of any Indian cultural resource or artifact, or entry onto a significant cultural site designated by a tribal governing body with the concurrence of the Director, except with the express written consent of the governing body of the tribe or tribes to which such resource, artifact, or cultural site pertains." NOAA should pursue a cooperative agreement with the tribes to coordinate management of cultural artifacts of tribal significance.

Response: The MPRSA provides NOAA with the authority to control access to cultural artifacts within the Sanctuary thereby helping to ensure their preservation. Accordingly, anyone proposing to remove a cultural or historic resource must apply for and obtain a sanctuary permit from NOAA. NOAA acknowledges the interest of the coastal tribes in preserving their cultural heritage and, in particular, those cultural artifacts of tribal significance found within the Sanctuary. NOAA considers its objective of preserving the historical and cultural resources of the Sanctuary to be compatible with the coastal tribes' desire to preserve their cultural heritage. Therefore, NOAA has modified § 925.9(j) to state: "The Director or designee shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe." NOAA has also added § 925.9(k) which states: "removal, or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry into a significant cultural site designated by a tribal governing body, the Director shall acquire the express written consent of the governing body of the tribe or tribes to which such cultural site pertains." NOAA will enter into a cooperative agreement with the tribes and the State of Washington that clarifies the process by which permits will be granted to conduct research or salvage operations on historical and cultural resources of tribal significance.

Comment: Current management of cultural resources is agreed upon between the Bureau of Indian Affairs (BIA) and the tribes. The BIA supports the tribes in the management of their cultural resources.

Response: See response to previous comment.

Comment: The regulation as proposed in the DEIS/MP is duplicative of State law. There already exists state and Federal antiquities acts to protect coastal archeological and historical sites that occur on or near the median high tide boundary. The State archeologist already coordinates archeological matters.

Response: The MPRSA is not duplicative of existing laws protecting historical and cultural resources. The MPRSA is more comprehensive in that it provides enforcement authority, including civil penalties, for the destruction or injury of historical and cultural resources.

The Abandoned Shipwreck Act of 1987 gives states the title to certain abandoned shipwrecks in state waters. Under the MPRSA, NOAA has trustee responsibilities for abandoned shipwrecks and other historical and cultural resources within national marine sanctuaries, including those located in state waters, for the purpose of protecting them. NOAA will coordinate with State agencies to ensure that historical and cultural resources within the Sanctuary are protected, and that the policies affecting historical and cultural resources in State waters are consonant with the policies in the Federal waters of the Sanctuary.

Issue: Discharges

Ocean Dumping

Comment: NOAA should not prohibit the use of dredged material disposal sites off Grays Harbor, Willapa Bay, the Columbia River, or on the north jetty and breakwater of the Port of La Push.

Response: The Sanctuary boundary does not extend south of Copalis Beach and excludes ports and harbors. Therefore, the maintenance activities at La Push and the use of the dredge disposal sites south of the boundary is not prohibited. In addition, the use of dredged spoil within the Sanctuary for beach nourishment in connection with harbor maintenance activities is exempt from the regulatory prohibition.

Comment: No ocean dumping should be allowed in proximity to the major submarine canyons.

Response: The regulations prohibit ocean dumping within the Sanctuary, and outside the Sanctuary if the material enters and injures Sanctuary resources or qualities.

Point Source Discharges

Comment: Prohibit discharges of toxics, plastic, and municipal garbage and sewage into the marine environment.

Response: The dumping of municipal garbage, toxics and plastics is prohibited within the Sanctuary by Sanctuary regulations and by regulations promulgated pursuant to the Act to

Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*) and the Marine Plastic Pollution Research and Control Act of 1987, which implements Annex V of MARPOL 73/78 in the U.S. Point source discharges are allowed provided such discharge is certified by NOAA in accordance with § 925.10 or approved by NOAA in accordance with § 925.11. After expiration of current permits, discharges from municipal treatment plants will be subject to the review process of § 925.11. At a minimum, secondary treatment will be required.

Comment: Current regulations are adequate. NOAA has not proven that the proposed regulations will enhance the recreational or aesthetic appeal, and water quality.

Response: Current regulations do not protect the area from the cumulative impacts of various types of discharges, including: (1) Some ocean dumping; (2) sewage receiving only primary treatment; and (3) non-point source discharges. NOAA's ocean disposal regulation offers protection to the offshore environment that does not otherwise exist. NOAA will work with existing tribal, State and Federal authorities to ensure that the quality of the water and Sanctuary resources are maintained.

Comment: Clarify how discharges from drilling and production rigs may be addressed if oil and gas leasing were to occur in the future.

Response: The regulations prohibit oil and gas exploration, development, and production activities within the Sanctuary. NOAA will work with the Environmental Protection Agency (EPA) to ensure that best available technology is implemented on any drilling rigs located outside of the Sanctuary to ensure that no discharges enter and injure Sanctuary resources and qualities.

Comment: Depositing or discharging from any location within the Sanctuary or from beyond the Sanctuary should be prohibited.

Response: The mandate of the National Marine Sanctuary Program is to facilitate multiple uses that are compatible with resource protection. Depositing or discharging most materials within the boundary of the Sanctuary, or from beyond the boundary of the Sanctuary if such material subsequently enters the Sanctuary and injures Sanctuary resources or qualities is prohibited. NOAA will work with EPA, the tribes and the State of Washington to maintain water quality. NOAA may require special terms and conditions, including (but not limited to) improved effluent quality, on EPA permits to ensure Sanctuary resources and qualities are protected.

Non-Point Source Discharges

Comment: NOAA should not require at a minimum secondary treatment and sometimes tertiary or more for non-point source pollution. It is virtually impossible to subject runoff to these levels of treatment.

Response: NOAA does not require such treatment for non-point source pollution. NOAA will monitor non-point source pollution and work with those living and working in the coastal watersheds to minimize runoff into the Sanctuary.

Comment: It should be stated that there is no intent to regulate forest practices by Sanctuary administrators. There is no research or evidence which would justify the statement made in the proposed DEIS that the "greatest source of non-point discharge is the forest." This statement needs clarification and tree farmers must be assured that they can continue to grow and harvest trees pursuant to Washington's Forest Practices Act, one of the most stringent in the country.

Response: NOAA's Strategic Assessment Branch has analyzed existing watershed data from the National Coastal Pollutant Discharge Inventory to determine sources of runoff. Summaries of pollution discharges for total volumes of nitrogen, lead, and all suspended solids combined indicate that with the exception of suspended solids discharged by paper mills, the greatest source of sediments discharged into sanctuary waters is from natural forest runoff.

Despite this evidence, NOAA will not be directly regulating upland uses. However, NOAA will coordinate with the upland user groups, and managing agencies to minimize non-point source impacts on Sanctuary resources.

Comment: The suggestion that excessive erosion from clear cutting practices is the source of most non-point source pollution from forests supports the need for further study of this common practice and the issuance of more stringent controls due to the steep and unstable slopes and amount of rainfall.

Response: NOAA agrees and will conduct monitoring and research initiatives in coordination with those living and working in the watersheds to minimize the impacts from timbering activities.

Discharges Outside the Sanctuary

Comment: Clarify to what extent the "sphere of influence" of the discharge regulation extends, to what degree it may affect coastal communities including the tribes, and who determines if injury to a Sanctuary resource has occurred. Would a community such as Ocean Shores or an Indian tribe face increased water quality regulations or enforcement? Further, does the discharge prohibition apply to particulates that are discharged into the air from pulp mills and subsequently enter the Sanctuary and harm Sanctuary resources and qualities.

NOAA should not impose additional restrictions, beyond the existing requirements of the Federal Water Pollution Control Act (FWPA), on the discharge of effluent and dredge spoils into marine waters. There is no evidence that additional restrictions on these activities are required to protect water quality in the proposed sanctuary.

Response: The MPRSA protects Sanctuary resources and qualities (including water quality) from the impacts of discharges from within and outside the boundary of a Sanctuary whether airborne or waterborne. NOAA is responsible for determining injury to Sanctuary resources. Discharges pursuant to existing permits may be continued subject to the certification requirements of § 925.10. New permits are subject to the review process of § 925.11. At a minimum, secondary treatment will be required for any treatment plants discharging directly into the Sanctuary. With respect to airborne or waterborne discharges outside the Sanctuary, NOAA may condition such permits only if it is established that the discharges are entering the Sanctuary and injuring Sanctuary resources or qualities. NOAA will work closely with all to ensure that none is unduly burdened by permitting requirements related to discharges. NOAA will coordinate with the State's Air Quality Board and Department of Ecology to monitor air and water quality over and in the Sanctuary.

Application of Discharge Regulations to Vessel Traffic

Comment: The application of this regulation should prohibit organic and inorganic discharges from fishing vessels and submarines (including bilge), aircraft. The prohibition should apply to all naval operations.

Response: The Sanctuary regulations specify the fishing and vessel related activities exempted from the discharge prohibition (§ 925.5(a)(2)(i)–(iv)). Discharges and deposits from vessels are prohibited except for specific discharges intended to provide for traditional fishing activities, such as fish wastes resulting from traditional fishing

operations in the Sanctuary, and for allowed vessel operations in the Sanctuary, namely biodegradable effluent incidental to vessel use and generated by approved marine sanitation devices, water generated by routine vessel operations, and engine exhaust. Such discharges are determined to be of minimal threat to the Sanctuary and are important for the safe and effective functioning of fishing and other vessels. Other discharges from vessel operations are prohibited. If in the future NOAA determines that increased protection for Sanctuary resources and qualities from these exempted activities is warranted, the Sanctuary regulations could be revised.

Comment: Clarify acceptable and unacceptable discharges from fishing vessels.

Response: See response to previous comment.

Economic Impacts of Discharge Regulations

Comment: Banning the use of approved dredge disposal sites would impose severe economic impacts on marine navigation and commerce, and ultimately to the coastal communities.

Response: The boundary of the Sanctuary does not encompass the approved dredge disposal sites off of Grays Harbor, Willapa Bay, and the Columbia River. However, no new dredge disposal sites may be located within the Sanctuary boundary.

Comment: NOAA must examine the economic impacts of the discharge regulations on existing industries. There are currently 72 identified dischargers in the study area. It is unclear if the proposed Sanctuary would impact the continued operation of the pulp mill's NPDES permitted discharge near Grays Harbor.

Response: The Sanctuary's boundary does not extend south of Copalis Beach. Therefore, the only discharge regulation that would apply to dischargers in Grays Harbor would be the prohibition on discharges from outside the boundary that subsequently enter and injure Sanctuary resources or qualities. NOAA will need to establish that effluents from pulp mills are injuring Sanctuary resources or qualities before it would impose terms and conditions on the pulp mill's NPDES permit. If this situation were to occur, NOAA would work with the discharger, the State of Washington, and EPA to minimize the economic impacts of reducing the impacts.

Issue: Oil and Gas Development

Comment: NOAA's failure to offer as an alternative an outright, no conditions ban on hydrocarbon development within the Sanctuary is contrary to NEPA regulations, 40 CFR 1502.14 which states that the alternatives section is the heart of the environmental impact statement. NOAA should permanently ban oil and gas exploration, development, and production activities.

Response: Section 2207 of the Oceans Act of 1992 prohibits oil and gas exploration, development and production within the Sanctuary. The Sanctuary regulations repeat this prohibition.

Comment: NOAA should designate a buffer zone based on ocean currents and local seabed geography to prevent damage from external mineral operations.

Response: NOAA believes that the Sanctuary is large enough to buffer the sensitive canyon and coastal ecosystems from negative impacts of mineral development. Further, NOAA's authority to regulate discharges from outside the Sanctuary boundary that subsequently enter and injure Sanctuary resources or qualities provides additional protection over mineral activities.

Comment: NOAA should commit in the FEIS/MP and Record of Decision to the preparation of an EIS before lifting the prohibition.

Response: As previously discussed, the Oceans Act of 1992 prohibits oil and gas explorations, development and production within the Sanctuary. This prohibition may only be lifted by an Act of Congress.

Comment: The oil companies should be excluded from voicing an opinion regarding the Sanctuary because this privilege should be extended only to those who have spent time enjoying the State of Washington coastline.

Response: The Sanctuary program does not and cannot discriminate against any individual, agency, or interest group. All individuals have the right to voice an opinion.

Comment: Has NOAA come across any proposal for offshore wind generated power?

Response: NOAA is not aware of any proposal for offshore wind generated power.

Comment: The President's decision to postpone OCS activities off the coasts of Washington and Oregon until after the year 2,000 should expire at that time unless affirmatively extended.

Response: Section 2207 of the Oceans Act of 1992 indefinitely bans oil and gas exploration, development and production within the boundary of the Sanctuary. These prohibitions could only be lifted by an Act of Congress.

Contingency Plans

Comment: The Sanctuary should establish a contingency plan in coordination with existing state and Federal contingency plans. Efforts should be made to coordinate with the State of Washington Departments of Wildlife, Fisheries, Ecology, and Natural Resources and pursue data sharing opportunities.

Response: The FEIS/MP identifies existing oil spill contingency plans and efforts in the State of Washington to cover the Strait of Juan de Fuca and Outer Coast. NOAA will coordinate closely with the existing agencies involved in contingency and emergency response planning, particularly the U.S. and Canadian Coast Guard and the State of Washington Office of Marine Safety (OMS). However, NOAA agrees that the Sanctuary requires its own contingency plan to ensure that resources are protected during events that threaten the environment. A prototype Sanctuary Contingency Plan is being tested at the Channel Islands National Marine Sanctuary. Once implementation experience has been gained, the plan will be adapted to other sites, including the Olympic Coast National Marine Sanctuary. To implement successfully an organized emergency response, NOAA will incorporate state and Federal legislation as well as local efforts into the Sanctuary Contingency Plan.

Comment: NOAA needs to provide for better oil spill response planning.

Response: NOAA is coordinating with the regional response committees of the OMS to ensure that the equipment is available to address an emergency that would threaten Sanctuary resources.

Comment: An Oil Spill Response Center should be sited in close proximity to the Sanctuary to address small spills north of Grays Harbor where there is currently a lack of oil spill response capability.

Response: NOAA is promoting this idea in its participation on the regional response subcommittee whose jurisdiction is the Strait of Juan de Fuca and the Outer Coast. However, priority will be placed on the stationing of tugs and barges dedicated to emergency response.

Comment: The tribes should be properly funded to handle resource damage assessment as well as other activities where an oil spill could impact their subsistence and ceremonial harvest and cultural values.

Response: The reservations are not within the Sanctuary boundary. Therefore, the Sanctuary cannot dedicate funds to the Tribes for the

purpose of damage assessment pursuant to a spill of hazardous materials.

Comment: NOAA should request that the oil industry's Marine Spill Response Corporation station a tractor/tug response vessel at Neah Bay.

Response: NOAA has made the recommendation to the subcommittee on emergency response for the Strait of Juan de Fuca and the Outer Coast. NOAA is actively participating in formulating the recommendation to the State, and will coordinate with the Makah Tribe in their planning initiative to expand their marina to plan to accommodate a tug or emergency response vessel that is of appropriate size to service the Outer Coast and the Strait of Juan de Fuca.

Comment: NOAA should ensure that drills are conducted for the Clean Sound Cooperative with outside evaluation.

Response: NOAA intends to hire an operations manager immediately after designation to address issues related to vessel traffic and contingency planning. One of the priorities of this position will be to encourage the Coast Guard to focus on the Sanctuary during its emergency response drills.

Comment: NOAA should propose the examination of extending unlimited liability for spills to the shipping companies and the original firms providing the original source materials involved in the polluting activities.

Response: The MPRSA only provides NOAA with the authority to collect $100,000 per day for each violation pursuant to 16 U.S.C. 1437(c)(1), and damages to Sanctuary natural resources pursuant to 16 U.S.C. 1443.

Issue: Sealion Rock

Comment: NOAA should prohibit, or at least condition, the Navy's practice bombing activities over Sealion Rock due to the impact on seabirds, depositing of metal objects in the Sanctuary, and because the military environment does not require such a sensitive area to be used for such purposes. At the very least, NOAA should prohibit the practice bombing during the breeding season. Section 7 consultations with the Department of Commerce and the Department of the Interior should not be construed as sufficient mitigation because these processes do not address impacts to non-endangered species.

Response: NOAA agrees that the Navy practice bombing of Sealion Rock is inconsistent with the goals of the Sanctuary program. Because the permit under which the Navy conducted its activities over Sealion Rock was rescinded by the Secretary of the Interior in August, 1993, NOAA may prohibit outright all bombing activities within the Sanctuary and has determined to do so. The regulation adopted by NOAA prohibits all practice bombing and provides that no exemption from the prohibition will be granted.

Comment: NOAA does not have the authority to prohibit or condition the Navy's activities.

Response: Because the Navy's authorization from the Secretary of Interior was rescinded, NOAA now has the authority to not only condition but also prohibit the Navy's practice bombing activities.

Comment: NOAA should place the Navy's bombing activities within the scope of regulation to allow future regulation if necessary. To not list military activities is in conflict with the primary goal of resource protection.

Response: NOAA has addressed Navy activities in § 925.5(d) of the regulations.

Comment: NOAA should investigate the history of the Navy's activities over Sealion Rock to determine if a grandfather clause is warranted.

Response: The history of the Navy's activities and the permit that authorized its activities has been outlined in the FEIS/MP. The Navy's authority to conduct practice bombing activities has been rescinded and thus consideration of a grandfather clause is irrelevant.

Comment: Clarify how Navy bombing of Sealion Rock at 200 feet is less disruptive than commercial overflights.

Response: NOAA does not assert that the Navy's low flying activities are less disruptive than commercial or non-commercial overflights. NOAA's differing regulations in the DEIS/MP applying to Navy and non-military overflights resulted from limitations placed on NOAA by the MPRSA with respect to terminating pre-existing leases and permits.

Issue: Protection of Treaty Rights

Comment: NOAA's regulations do not formally recognize the Federal Government's trust responsibility to the coastal Tribes. The regulations contain no provision which formally requires the Director to consider and protect tribal interests when ruling on permit applications to conduct development activities within the Sanctuary. To address this issue, the following modifications to the § 925.8 should be made:

> The Director * * * may issue a permit * * * to conduct an activity otherwise prohibited by § 925.5(a)(2)–(7), if the Director finds that the activity will: further research related to Sanctuary resources: * * * *or promote the welfare of any Indian Tribe adjacent to the Sanctuary.* In deciding whether to issue a permit, the Director shall consider such factors as * * * *the impacts of the activity on adjacent Indian Tribes. Where the issuance or denial of a permit is requested by the governing body of an Indian Tribe, the Director shall consider and protect the interests of the Tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the Tribe* * * *

Response: NOAA agrees that the designation of the Olympic Coast National Marine Sanctuary is subject to the Federal government's general fiduciary responsibility to the coastal tribes. Accordingly, NOAA has modified § 925.9(d) of the regulations to incorporate the recommended language.

Comment: NOAA's regulation prohibiting the taking of marine mammals and seabirds conflicts with treaty rights to fish and hunt marine mammals in tribal usual and accustomed fishing grounds.

Response: NOAA recognizes that, given the standard for abrogating treaty rights enunciated by the Supreme Court in *United States* v. *Dion*, 476 U.S. 734 (1985), the provisions of the MPRSA do not abrogate the coastal Tribes' treaty fishing and hunting rights. However, it is unclear whether Congress intended the MMPA and the Endangered Species Act (ESA) to abrogate these rights. Recently, the Makah Tribe has pursued clarification regarding the applicability of the Marine Mammal Protection Act (MMPA) and ESA to its treaty rights to hunt whales and seals. The issue is currently being examined by the tribes and the National Marine Fisheries Service (NMFS). Given the concerns raised by the coastal tribes, § 925.5(a)(6) has been revised to read as follows:

> Taking any marine mammal, sea turtle, or seabird in or above the Sanctuary, except as authorized by the National Marine Fisheries Service or the United States Fish and Wildlife Service under the authority of the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or pursuant to any treaty with an Indian Tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA, and MBTA, to the extent that they apply.

In addition, § 925.5(a)(8) has been modified similarly. The revised language recognizes the coastal Tribe's treaty right to hunt whales and seals. However, the regulation also requires that the right be exercised in accordance with the provisions of the MMPA, ESA, and MBTA. If the MMPA, ESA or MBTA is determined to abrogate or otherwise

restrict the Tribe's exercise of its right to hunt whales and seals, then that determination shall apply to the Tribe's exercise of those rights within the boundary of the Sanctuary.

Comment: The regulations fail to preserve tribal control of their cultural heritage. NOAA should amend § 925.5(a)(8) to read as follows:

Removal or attempted removal of any Indian cultural resource or artifact, or entry onto a significant cultural site designated by a Tribal governing body with the concurrence of the Director, except with the express written consent of the governing body of the Tribe or Tribes to which such resource, artifact, or cultural site pertains.

Response: The MPRSA provides NOAA with the authority to control access to cultural or historical artifacts within the Sanctuary thereby helping to ensure their preservation. Accordingly, anyone proposing to remove a cultural or historical resource must apply for and obtain a Sanctuary permit from NOAA. NOAA also acknowledges the coastal Tribes' desire to preserve their cultural heritage and, in particular, those cultural artifacts of tribal significance found within the Sanctuary. NOAA considers its objective of preserving the historical and cultural resources of the Sanctuary to be compatible with the coastal Tribes' desire to preserve their cultural heritage. Accordingly, § 925.9(j) has been modified and § 925.9(k) has been added to address the coastal tribe's concerns.

Comment: The regulation prohibiting overflights under 1,000 ft. except for valid law enforcement purposes conflicts with the treaty secured rights to access certain reservation lands such as Tatoosh Island and Ozette, which are only accessible by helicopter in the winter months, and to conduct aerial timber cruises and engage in helicopter logging on portions of the reservation abutting the Sanctuary. Therefore the following amendment to § 925.5(7) is proposed:

Flying motorized aircraft at less than 1,000 feet above the Sanctuary within one nautical mile of the coastal boundary of the Sanctuary and the Flattery Rocks, Quilleute Needles, and Copalis National Wildlife Refuges, except for valid law enforcement purposes *or where authorized by a governing body of an Indian Tribe to provide access to reservation lands.*

Response: NOAA acknowledges the Tribes' concerns and does not intend to interfere with tribal rights to access reservation lands. Also, for the reasons discussed below, the minimum altitude has been changed to 2000 ft. In order not to interfere with Tribal access to reservation lands, the prohibition on flying has been changed to read:

Flying motorized aircraft at less than 2,000 feet above the Sanctuary within one nautical mile of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, and within one nautical mile seaward from the coastal boundary of the Sanctuary, except as necessary for valid law enforcement purposes, for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian Tribe.

Comment: NOAA should apply the management plan equally to tribal and non-tribal governmental entities within the adopted boundary equally.

Response: NOAA is legally bound to recognize treaty secured rights and has no intention to interfere with these rights. As such, there will be circumstances in which Sanctuary regulations will apply to tribal and non-tribal members differently.

Issue: Vessel Traffic

Comment: Route tankers and barges as far away from near-shore reefs and islands as possible. Clarify what types of vessels can transit close to shore.

Response: There exists a Cooperative Vessel Traffic Management System (CVTMS) established and jointly managed by the United States and Canada. The CVTMS is a mandatory regime and consists of all navigable waters of the Strait of Juan de Fuca and its offshore approaches, southern Georgia Strait, the Gulf and San Juan Archipelagos, Rosario Strait, Boundary Pass, Haro Strait, and Puget Sound, bounded on the west by longitude 147 °W. latitude 48 °N., and on the northeast by a line along 49 °N. from Vancouver Island to Semiamoo Bay.

The rules of the CVTMS are intended to enhance safe and expeditious vessel traffic movement, to prevent groundings and collisions, and to minimize the risk of property damage and pollution to the marine environment. The rules apply to:

a. Each vessel of 30 meters or more in length; and

b. Each vessel that is engaged in towing alongside or astern, or in pushing ahead, one or more objects, other than fishing gear, where:

(1) The combined length of the vessel towing, the towing apparatus, and the vessel or object towed is 45 meters or more; or

(2) The vessel or object towed is 20 meters or more in overall length.

Both the Canadian and the United States Coast Guards are studying methods to improve the CVTMS in the area. Items being studied include replacement of outdated equipment, elimination of gaps in coverage, and increasing operator training and assignment length.

The Oil Pollution Act of 1990 (OPA 90) requires the U.S. Coast Guard to conduct a national Tanker Free Zone Study. This study is nearing completion and will recommend regulations requiring tank vessels to remain offshore during coastal transits.

Further, NOAA has recommended to the U.S. Coast Guard that an International Maritime Organization (IMO) approved ATBA be established within the proposed Sanctuary boundary. This would request that vessels transporting hazardous materials remain at least 25 nautical miles offshore while in the vicinity of Sanctuary waters or until making their approach to the Strait of Juan de Fuca using the established CVTMS traffic separation scheme. Although ATBA's are not compulsory for foreign flag vessels, a maritime state may make such an area compulsory for domestic vessels transiting the waters under its jurisdiction.

Comment: Clarify "commercial vessel" and distinguish between various sizes, uses, and types of vessels.

Response: "Commercial vessel" means any vessel operating in return for payment or other type of compensation. Clarification between sizes, uses, and types of vessels would require more space than is available in this document. Rather than attempt to hold to a general definition of "commercial vessel", reference will be made to specific types of vessels, i.e., tank vessels, bulk carriers, fishing vessels, pleasure craft, etc., wherever required.

Comment: The Sanctuary boundary should be published on navigational charts.

Response: NOAA agrees and will submit the Sanctuary boundary to the Nautical Charting Division of the National Ocean Service. The boundary will be delineated on the next update of the appropriate navigational chart.

Comment: Spill containment and cleanup measures should be part of appropriate mitigation requirements for vessels operating within the Sanctuary.

Response: OPA 90 mandates that tank vessel contingency plans be prepared for a worst-case discharge, and that vessel plans be reviewed and approved by the U.S. Coast Guard. OPA 90 also stipulates that each responsible party for a vessel from which oil is discharged, or which poses the substantial threat of a discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, is liable for the removal costs and damages resulting from such an incident.

Further, Washington State law (title 88 section 46 Revised Code of Washington) requires the owner or

operator of a tank vessel to prepare and submit an oil spill prevention plan prior to the vessel's entry into a Washington port. The law also requires that each tank vessel, cargo vessel of greater than three hundred or more gross tons, or passenger vessel of greater than three hundred or more gross tons have a contingency plan for the containment and cleanup of oil spills from such vessel into the waters of the State.

Comment: NOAA should provide a more complete explanation of how implementation of each of the regulations would put U.S. shipping companies at an economic disadvantage in relation to foreign vessels. Precisely what would be the estimated cost in dollars, time, inconvenience, and ultimate impact upon U.S. shipping companies.

Response: NOAA is promulgating no regulations that will adversely affect domestic vessels.

Comment: NOAA should put forth a vessel traffic management plan, spearheaded by the U.S. Coast Guard, that addresses research needs, vessel traffic monitoring and communication systems, and future regulatory alternatives. The management plan should be proactive, and establish a timetable for considering new vessel traffic regulations in the future.

Response: NOAA is working with the U.S. Coast Guard, which has the primary authority for vessel traffic regulation, to determine the need for additional measures to ensure protection of Sanctuary resources and qualities. In addition, NOAA will work with the U.S. Army Corps of Engineers (COE) and the EPA regarding vessel traffic activities resulting from the transport of dredged material through the Sanctuary for disposal outside the Sanctuary. These consultations will aim to determine which resources are most at risk, which vessel traffic practices are most threatening, and which regulations or restrictions would be most appropriate to alleviate such risk.

NOAA agrees that an improved vessel traffic monitoring and communication system along the coast is desirable. OPA 90 requires the Secretary of Transportation to complete a comprehensive study on the impact of installation, expansion, or improvement of vessel traffic servicing systems. NOAA will work with the State of Washington's OMS, the U.S. Coast Guard, and appropriate public agencies during the development of these monitoring studies to determine an appropriate system for the Sanctuary and the need for any additional site-specific protective measures.

Vessel traffic monitoring and research and coordination on this subject have been incorporated into the Sanctuary management plan.

Comment: Allow only double-hulled vessels in the Sanctuary.

Response: OPA 90 establishes double hull requirements for tank vessels. Most tank vessels over 5,000 gross tons will be required to have double hulls by 2010. Vessels under 5,000 gross tons will be required to have a double hull or a double containment system by 2015. All newly constructed tankers must have a double hull (or double containment system if under 5,000 gross tons), while existing vessels are phased out over a period of years.

As previously stated, the U.S. Coast Guard is completing a study of a tanker free zone where tank vessels would be required to remain offshore during coastal transits. Further, a proposal to establish an ATBA within the Sanctuary boundary has been developed and will be submitted to the International Maritime Organization (IMO) for approval at the earliest possible date which, in accordance with IMO's procedures, is June, 1994. Both actions will serve to ensure that hazardous material laden vessels will remain an appropriate distance offshore.

Comment: Require vessels to have a pilot aboard.

Response: Requirements for pilots are set forth in both Federal and state regulations. NOAA will monitor and review vessel traffic in the Sanctuary and make recommendations to the appropriate regulatory agencies, state and Federal, regarding the need for additional pilotage requirements. Pilotage is currently compulsory for all vessels except those under enrollment or engaged exclusively in the coasting trade on the West Coast of the continental United States (including Alaska) and/or British Columbia. Port Angeles has been designated as the pilotage station for all vessels enroute to or from the sea.

OPA 90 requires the U.S. Coast Guard to designate U.S. waters where a second licensed officer must be on the bridge of a coastwise seagoing tanker over 1,600 gross tons. Under the Ports and Waterways Safety Act, the U.S. Coast Guard also is proposing to require a second officer on foreign flag tankers over 1,600 gross tons and on U.S. registered tankers over 1,600 gross tons.

Comment: Establish a tonnage limit within three nautical miles of shore except for those making a port call.

Response: All types of vessels and traffic patterns will be reviewed by NOAA, the U.S. Coast Guard, and the State of Washington OMS to determine any appropriate action to be taken. In conducting this review, attention will be paid to vessel type, cargo carried, and vessel size.

Comment: Require all vessels to have English speaking bridge personnel.

Response: All vessels required to participate in the Juan de Fuca region CVTMS are required to make all reports in English.

Comment: Curtail traffic during poor weather conditions.

Response: NOAA will work with the state, U.S. Coast Guard, and appropriate public agencies to determine the need for further vessel traffic regulations to specifically address vessel traffic during adverse weather conditions.

During conditions of vessel congestion, adverse weather, reduced visibility, or other hazardous circumstances in the area of the Juan de Fuca Region CVTMS, the Cooperative Vessel Traffic Management Center may issue directions to control and supervise traffic. They may also specify times when vessels may enter, move within or through, or depart from ports, harbors, or other waters of the CVTMS Zone.

Further, the U.S. Coast Guard's Navigation Rules, International and Inland, speak specifically to the conduct of vessels while at sea. Rule 6 of the International and Inland Steering and Sailing Rules states that "Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions."

Comment: Prohibit engine powered water craft of any type.

Response: A fundamental objective of the sanctuary program is "to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities" (16 U.S.C. 1431(b)(5)). NOAA will consider the threats from all types of vessels—power driven, sailing, or paddle propelled—as a continuing analysis of vessel traffic within the sanctuary boundaries.

Comment: Manage the off-loading or exchange of cargo or oil.

Response: No offloading or exchange of oil occurs within the boundary of the Sanctuary. This activity generally occurs in ports which are located outside of the Sanctuary boundary. Further, this type of activity is addressed by both OPA 90 and programs being established by the recently created Washington State OMS.

Comment: Prohibit shipment of reclaimed spent nuclear fuel from foreign reactors through the Sanctuary.

Response: As previously noted, NOAA has recommended to the U.S. Coast Guard that an IMO approved ATBA be established within the Sanctuary boundary. This would require vessels transporting hazardous materials to remain at least 25 nautical miles offshore while in the vicinity of Sanctuary waters or until making their approach to the Strait of Juan de Fuca using the established CVTMS traffic separation scheme.

NOAA will also work with the State of Washington's OMS and both the U.S. and Canadian Coast Guards to be informed of, and alerted to, in a timely and regular manner, all hazardous cargo carriers transiting near Sanctuary waters. Further, through participation in regular meetings of the Washington State Regional Marine Safety Committees and discussions with the U. S. Coast Guard, NOAA will ensure that contingency plans adequately address such transport issues.

Comment: Prohibit commercial vessel anchorages within the Sanctuary, particularly off Makah Bay, except in emergencies.

Response: The use of the Makah Bay anchorage by vessels waiting either for an available pilot at Port Angeles or instructions from their home office, has been examined. Currently, its use as a temporary anchorage has been agreed upon by both the U.S. and Canadian Coast Guards. This is viewed as a more favorable alternative than having such vessels continuously underway within, and off the entrances to, the Strait. Vessels at anchor are subject to MARPOL, U.S. Federal law, and Sanctuary regulations regarding discharges. The use of this anchorage is monitored by Tofino Vessel Traffic Service which can also educate such vessels regarding the Sanctuary and its regulations.

Comment: Clarify NOAA's authority to regulate vessel traffic within State of Washington waters.

Response: Section 303 of the MPRSA gives NOAA the authority to promulgate regulations to implement the designation, including regulations necessary to achieve resource protection.

Comment: The State and Federal government have appropriated $75 million to expand and enhance maritime activity at Grays Harbor through waterway dredging and port terminal development programs. If vessel traffic is restricted, one branch of the government would be defeating the purpose of other parts of the government.

Response: NOAA has studied vessel traffic along the Washington coast. The result of the analysis was the recommendation for the previously mentioned ATBA. This proposal, if adopted, would add approximately 17 nautical miles on a transit from Grays Harbor to the entrance of the Straits of Juan de Fuca and approximately 21 nautical miles on a transit from the entrance of the Straits to Grays Harbor. In comparison to the costs of cleanup, legal fees, liability, fines, loss of cargo, and vessel and environmental damages, the proposals to establish the ATBA seem reasonable.

Comment: Double-hulled proposals are not economically sensible in the foreseeable future.

Response: Congress has mandated (OPA 90) national double hull requirements for tank vessels.

Issue: Overflights

Comment: Establish the boundary for overflights at the beach rather than one (1) mile inland.

Response: The boundary for overflights is at the shoreline and not one (1) mile inland.

Comment: Establish a 2,500 foot minimum flight altitude over the sanctuary.

Response: To be consonant with current regulations regarding flights over charted National Park Service Areas, U.S. Fish and Wildlife Service Areas, and U.S. Forest Service Areas, NOAA is prohibiting the flying of motorized aircraft at less than 2,000 feet above the Sanctuary within one nautical mile of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, and at less than 2,000 feet above the Sanctuary within one nautical mile seaward from the coastal boundary of the Sanctuary, except as necessary for valid law enforcement purposes, for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian Tribe. NOAA will work with the Federal Aviation Administration (FAA) on how best to reflect this limitation on aeronautical charts.

Comment: Permit search and rescue at all times by whatever aircraft is needed to accomplish the task.

Response: The prohibitions set forth in the Sanctuary regulations do not apply to activities necessary to respond to emergencies threatening life, property, or the environment pursuant to § 925.5(c) of the regulations. Thus, in any emergency, search and rescue aircraft are allowed to perform whatever tasks are required within the Sanctuary boundary.

Comment: When necessary to bring a research flight into the area below the Sanctuary prescribed ceiling, regulations should require the plane's engine be kept at or below a reasonable decibel level as heard from the ground.

Response: FAA regulations (14 CFR part 36) codify noise standards for aircraft operating within U.S. airspace. Adherence to these standards is already required. When research is to be conducted within the Sanctuary boundary, aircraft operators will be required to obtain a permit and conduct such research in such a manner so as to minimize disturbance yet remain within safe aircraft operating parameters.

Issue: Living Resource Extraction

Fishing

Comment: NOAA should not restrict access to fishing grounds or catchability. Crab fishing and razor clam digging must be allowed.

Response: The regulation of fishing is not authorized by the Designation Document. NOAA has determined that existing fishery management authorities are adequate to address fishery resource issues. As with all other fisheries that occur within the Sanctuary, crab fishing and razor clam digging remain under the regulatory authority of existing Federal, state, tribal and regional fishery authorities. NOAA does not view fishing as contrary to the goals of the Sanctuary. The sanctuary program is by law mandated "to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources * * * ." (including fishing) (16 U.S.C. 1431(b)(5)).

Existing fishery management agencies are primarily concerned with the regulation and management of fish stocks for a healthy fishery. In contrast, the National Marine Sanctuary Program has a different and broader mandate under the MPRSA to protect all Sanctuary resources on an ecosystem-wide basis. Thus, while fishery agencies may be concerned about certain fishing efforts and techniques in relation to fish stock abundance and distribution, the Marine Sanctuary Program is also concerned about the potential incidental impacts of specific fishery techniques on all Sanctuary resources including benthic habitats or marine mammals as well as the role the target species plays in the health of the ecosystem. In the case of the Olympic Coast, fish resources are already extensively managed by existing authorities and

NOAA does not envision a fishery management role for the Sanctuary Program. Accordingly, fishing activities have not been included in the list of activities in the Designation Document subject to regulation as part of the Sanctuary regime. However, the Sanctuary Program will provide research results and recommendations to existing fishery management agencies in order to enhance the protection of fishery and other resources within the Sanctuary.

Comment: No additional fisheries management or regulation is needed in the Sanctuary. Commercial, recreation, and subsistence fishing can be compatible with sanctuary designation, and the existing regulatory framework is adequate at this time.

Response: See response to previous comment. The Designation Document places kelp harvesting within the scope of future regulation since there is no existing management plan for kelp harvesting.

Comment: Clarify the language associated with commercial fishing practices near sunken vessels, rocks and reefs in the proposed sanctuary to insure continuance of historical and customary fishing practices. Existing Federal and state regulations adequately protect archeological treasures, man-made reefs, and natural rock and reef formations. The FEIS should acknowledge and permit prevailing practices.

Response: Commercial fishing vis-a-vis historical resources is an exempted activity under the prohibition against disturbance of historical resources. However, the exemption is only for incidental disturbance and therefore does not allow deliberate disturbance.

Comment: Fishing should either be regulated, or placed in the scope of regulation, because there may be a time in the future when fishing needs to be regulated by the Sanctuary.

Response: NOAA believes that existing authorities are adequate to regulate fishing. Should the need arise to regulate fishing as part of the Sanctuary management regime, the Designation Document could be amended.

Comment: Proposed regulations should result in the gradual reduction of fishing, aquaculture, kelp harvesting and waterfowl hunting to insure that no commercial activity threatens the integrity of any resources in the proposed Sanctuary. Some commenters believed that the Sanctuary should ban all commercial fishing activities except Native American fishing activities.

Response: A blanket reduction of resource-use activities across the Sanctuary could not be imposed without credible evidence that each resource affected is threatened by a population decrease or stock failure. Absent such evidence, the Act requires that existing uses be facilitated to the extent compatible with the primary objective of resource protection.

Comment: True refugia should be established where all consumptive uses are prohibited for a period of time.

Response: The determination of whether refugia are established in the Sanctuary will be done in coordination with the NMFS, PFMC, Washington Department of Fisheries (WDF), the tribes, environmental groups, and industry. The Sanctuary Advisory Committee (SAC) will be an important forum to address this issue. If, in coordination with other governmental agencies, it is determined that establishment of refugia is a desirable alternative, NOAA will analyze the alternative through the preparation of an environmental impact statement/ management plan and solicitation of public input pursuant to the NEPA and the APA.

Comment: Driftnets, trawling, and all dragnet fisheries should be banned from the proposed Sanctuary as inconsistent with the regulation prohibiting alteration of, or construction on, the seabed.

Response: The only net gear used in fisheries in the Sanctuary are trolling gear (for salmon) and trawling gear (for groundfish). The regulatory prohibition on altering the seabed includes an exception for incidental disturbance resulting from traditional fishing operations. NMFS has conducted a limited study of the impact of trawl gear on the benthos and has not identified any resulting systematic destruction. However, the regulations could be modified to regulate any activity that is shown to cause significant disturbance of the seabed. This reflects adherence to the MPRSA's goals of preserving natural and human-use qualities of a marine area.

High-seas driftnets, defined as nets greater than 1.5 miles long, have been banned pursuant to United Nations resolution 46/215. While gillnets and setnets are currently used in the inland waters of the State of Washington, they are not used in Sanctuary waters.

Comment: NOAA should facilitate the regulation of resource extraction within the Sanctuary under a regulatory framework that is controlled by a single agency.

Response: Regulatory authority over resources and resource extraction industries is expressly granted by state and Federal statute. NOAA does not have the primary regulatory authority over resource extraction. NOAA can act to coordinate the various regulators and can impose additional regulations, but cannot reassign itself or other agencies regulatory authority.

Comment: NOAA must clarify and acknowledge all tribal treaty fishing rights in the FEIS/MP, and the interaction of Sanctuary regulations with the right of tribes to fish in their Usual and Accustomed fishing areas.

Response: This issue is clarified in the Designation Document and in Part II (under Socio-Demographic profile and Land Use). In addition, the coastal tribe's treaty rights are acknowledged in several sections of the regulations.

Comment: The entire study area must be considered as a "fishing area" since fish migrate along the entire Washington coast.

Response: NOAA recognizes that fish "know no boundaries in the sea." The fishing areas identified in the FEIS/MP only represent known locations where certain fishery activity is concentrated. The fishing areas displayed in the FEIS/MP are not related to regulatory jurisdiction in any way. They are simplified visual aids to complement the discussion of resources off the coast of Washington.

Aquaculture

Comment: Clarify NOAA's intention to regulate, condition, or prohibit aquaculture activities throughout the Sanctuary and adjacent to Indian reservations.

Response: The Sanctuary regulations do not directly prohibit aquaculture operations within the Sanctuary boundary. However, discharge of matter into the Sanctuary, or alteration of or construction on the seabed in connection with aquaculture activities are prohibited. It is unlikely that permits would be granted for aquaculture activities in the Sanctuary that violate these prohibitions. This determination is based upon U.S. Army Corps of Engineers (COE) guidance related to permits for fish pen mariculture operations, which prohibits fish farms in Federal natural resource areas, such as national seashores, wilderness areas, wildlife refuges, parks or other areas designated for similar purposes (e.g., national marine sanctuaries).

Comment: NOAA should change the proposed regulation governing alteration of or construction on the seabed to "maintenance and development of approved aquaculture operations", and strike "existing prior to the effective date of these regulations." Eliminating future aquaculture

development off the Olympic Coast would preclude opportunities for both private shellfish and finfish production and for public enhancement. Technology is being developed which would result in minimal environmental imbalance, and would afford employment for regional communities.

Response: See response to previous comment.

Comment: The Sanctuary should not regulate aquaculture activities because there are sufficient regulations in place.

Response: See response to previous comment.

Comment: The Sanctuary should provide mutually agreed upon requirements for aquaculture activities among the oyster growers of Willapa Bay.

Response: The boundary of the Sanctuary does not include Willapa Bay.

Comment: The discussion in the FEIS/MP on the impacts of aquaculture needs to be expanded and the proposal to not regulate aquaculture in the Sanctuary should be re-assessed. The FEIS/MP needs to address the use of drugs in farm-raised fish.

Response: The discussion of aquaculture within the Sanctuary is intended only to evaluate the current status of the industry in the study area—it is not intended to measure aggregate impacts. The request for expanded discussion of resources does not identify specific issues of discussion. A reassessment of aquaculture vis-a-vis the Sanctuary reveals that the industry is adequately regulated by existing state and Federal requirements. However, any discharges from such operations into the Sanctuary would be prohibited. The Sanctuary has no jurisdiction over the use of drugs in aquaculture—such determinations are under the purview of the Washington State Department of Health (WDH) and the Federal Food and Drug Administration (FDA).

Comment: All aquaculture should be banned from within the Sanctuary.

Response: See responses to previous comments regarding aquaculture.

Comment: Kelp harvesting should be banned or regulated within the Sanctuary.

Response: At present there is no kelp harvesting within the Sanctuary. While kelp harvesting was proposed to be included within the scope of activities listed in the Designation Document as subject to potential regulation under the Sanctuary Program, the final Designation Document does not list kelp harvesting. Kelp is only found within the state waters of the Sanctuary. Because the Washington Department of Natural Resources (DNR) has promulgated regulations for the management of kelp which should adequately protect the kelp, NOAA does not believe it necessary to list kelp as being subject to potential Sanctuary Program regulation. If the state regulations do not adequately protect the kelp within the Sanctuary, the Sanctuary Designation Document could be amended following the same procedures used to promulgate this Designation Document to authorize the regulation of kelp.

Issue: Marine Mammals, Sea Turtles and Seabirds

Comment: Clarify "takings". The prohibition on the taking of marine mammals and seabirds within the Sanctuary is redundant with the ESA, the MMPA and the MBTA, and what further impact it will have on the fishing community.

Response: "Taking" is defined in section 925.3 of the regulations to mean: (1) For any marine mammal, sea turtle or seabird listed as either endangered or threatened pursuant to the ESA to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct and, (2) for any other marine mammal, sea turtle, or seabird, the term means to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct. While marine mammals, seabirds and endangered and threatened species are protected under the MMPA, ESA and MBTA, NOAA believes that the higher penalties afforded under the MPRSA will provide a stronger deterrent.

The MBTA sets maximum criminal fines at either $500 or $2,000 per violation, depending on the violation. The MMPA sets maximum civil penalties at $10,000 and maximum criminal fines at $20,000. The ESA sets maximum civil penalties at $500, $12,000 or $25,000 per violation, depending on the violation; maximum criminal fines are set at $50,000. (All three statutes also provide for imprisonment for criminal violations.)

Section 307 of the MPRSA allows NOAA to assess civil penalties as high as $100,000 for each violation. In addition, monies collected under the MPRSA are available for use by the National Marine Sanctuary Program.

Comment: The MBTA would not allow any taking of migratory birds in the sanctuary, thus providing even stronger prohibition than sanctuary status can provide.

Response: See above response. Section 925.5(a)(6) of the Sanctuary regulations prohibits the taking of migratory birds within the Sanctuary. Including a prohibition on "taking" marine birds in the Sanctuary regulations allows such violations to be subject to the civil penalties authorized by the MPRSA which far exceed those authorized by the MBTA.

Comment: Prohibit all takings of marine mammals and seabirds, regardless of military or fishing exemptions.

Response: Section 925.5(a)(6) of the Sanctuary regulations prohibits the taking of marine mammals and seabirds in or above the Sanctuary except as authorized by the NMFS or the United States Fish and Wildlife Service under the authority of the MMPA, as amended, 16 U.S.C. 1361 *et seq.*, the ESA, as amended, 16 U.S.C. 1531 *et seq.*, and the MBTA, as amended, 16 U.S.C. 703 *et seq.*, or pursuant to any treaty with an Indian tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA, and MBTA, to the extent that they apply. Exemptions include a limited five-year incidental take of marine mammals provided by interim regulations promulgated pursuant to the MMPA, which are in effect until October, 1993. The ESA also has a limited incidental take exemption. See 16 U.S.C. section 1539(a)(2)B(i). NMFS, in conjunction with environmental groups and the fishing industry, is developing a permanent management regime to be implemented upon expiration of the MMPA interim regulations.

If in the future NOAA determines that the existing regulations promulgated under MMPA, ESA, MBTA or any other state or Federal statute are not adequate to ensure the coordinated and comprehensive management of marine mammals and seabirds, changes to the Sanctuary regulations would be undertaken in accordance with the requirements of the MPRSA, NEPA and APA.

Comment: Exclude from [takings] prohibition birds considered game.

Response: The only birds § 925.5(a)(6) prohibits the taking of are seabirds—seabirds are not considered game species.

Comment: Section 925.5(a)(6) of the proposed regulations would prohibit the taking of marine mammals or seabirds unless affirmatively permitted by regulations promulgated under authority of the ESA, MMPA, or MBTA. Because these regulations do not expressly permit any takings by treaty Indians, the proposed sanctuary regulations would effectively prohibit the Makah Tribe from exercising their treaty rights to take marine mammals. The proposed regulations would also

hinder the tribe's ability to exercise its fishing rights by precluding fisheries which result in the incidental taking of marine mammals and seabirds.

The DEIS/MP offers no conservation justification for imposing restrictions on the taking of marine mammals and seabirds which go beyond the restrictions imposed by the ESA and MMPA. The DEIS/MP concedes that the purpose of the proposed sanctuary regulations is *not* to protect particular species from extinction. According to the DEIS, the purpose of these additional prohibitions in the proposed regulations is to "extend protection for sanctuary resources on an environmentally holistic basis." This goal does not permit infringement of treaty rights. Therefore, the regulations should be amended by adding "or in accordance with any treaty to which the United States is a party."

Response: The regulatory prohibitions do not abrogate or obstruct any rights under an existing treaty. The regulations have been changed by adding "or pursuant to any treaty with an Indian tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA and MBTA, to the extent that they apply." The treaty between the Makah Tribe and the United States explicitly assures the "right of taking fish and of whaling or sealing at usual accustomed grounds and stations." (Article 4, Treaty of Neah Bay, 1855).

Incidental takes of marine mammals can legally occur under permit and exemption provisions of the MMPA. Currently, Washington coastal tribes apply for and receive exemption certificates from NMFS for the incidental taking of marine mammals during fishing. Fees for this exemption are waived for tribes.

Further, tribes cannot be denied entry into any fishery based on the likelihood or occurrence of seabird or marine mammal takings.

Comment: Change the wording of the regulation to read "as authorized or permitted by NMFS or [the U.S. Fish and Wildlife Service] USFWS under the authority of the MMPA and ESA." NMFS suggests that the preamble and/or regulations clarify that Sanctuary permits will not be required for activities authorized or permitted by NMFS or USFWS under MMPA or ESA. Such clarification would relieve many concerns over the possibility of overlapping and potentially duplicative permitting requirements.

Response: NOAA has amended the regulation by adding "as authorized by the National Marine Fisheries Service or the United States Fish and Wildlife Service under the authority of the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.* * * *." The inclusion of "as authorized or permitted" is viewed by NOAA as redundant.

Issue: Sanctuary Administration

Regulations/Permits

Comment: NOAA should use economic incentives rather than regulations to ensure that activities do not impact resources.

Response: NOAA does not have sufficient authority to provide economic incentives to ensure that activities do not impact Sanctuary resources. Even regulations, which include economic disincentives such as monetary penalties, are not sufficient to ensure that any activity does not impact resources.

Comment: Clarify the statement: "When a conflict with a sanctuary regulation related to specific [non-sanctuary] regulations occurs, the one more protective of sanctuary resources will prevail." NOAA regulations should not override those of the local jurisdictions. NOAA needs to clarify:

(1) The application of this policy to fishing;

(2) Types of conflicts the statement applies to;

(3) Who determines whether a conflict exists; and

(4) The process for resolving a conflict.

Response: NOAA agrees that the statement as written in the DEIS/MP is unclear. Accordingly, the statement has been deleted in the FEIS/MP. Essentially, the statement meant that if two regulations exist covering an activity in the Sanctuary, one promulgated by NOAA under the MPRSA authority and the other by another agency under a different statute, compliance with the less restrictive regulation will not relieve the obligation to comply with the other more restrictive one.

Comment: NOAA should follow the guidelines of NEPA when proposing any change in regulations that are listed in the scope of regulations. This is especially applicable to vessel traffic and discharge regulations. Also, clarification is needed on the rulemaking and amendment processes.

Response: Listing activities in the scope of regulation reflects that the issues and alternatives were addressed in the FEIS/MP, public hearings were held, and public comments were solicited regarding the activities. If NOAA later proposes the regulation of an activity listed in the scope of regulations in the Designation Document but not regulated at the time of Sanctuary designation, NOAA will request public comments on the proposal. When NOAA plans to amend a rule that has been promulgated, an analysis of the issues, affected environment, alternatives and consequences will be completed and public comments solicited. NOAA will then modify the proposal if necessary and respond to public comments when taking the final action.

Comment: A procedure must be established to disagree with management and issue an appeal if permits to conduct research are denied.

Response: Section 925.12 of the Sanctuary regulations set forth the procedures for appealing denials of Sanctuary permits. The appeal process involves a written statement by the appellant to the Assistant Administrator of NOAA. The Assistant Administrator may conduct a hearing on the appeal.

Comment: Clarify the procedure for obtaining permits for low-flying aircraft engaged in ongoing species monitoring studies and damage assessment studies in response to an incident such as an oil spill. Activities authorized by the NMFS and USFWS should not require a Sanctuary permit because the requirements for permits would be duplicative.

Response: All flights engaged in monitoring or research activities that fly below 2,000 feet are required to obtain a Sanctuary permit, or, if the activity is already pursuant to a permit, to have that permit certified. Permits are not required for overflights necessary to respond to emergencies threatening life, property or the environment.

Comment: NOAA should not grandfather existing uses if otherwise prohibited by sanctuary regulations.

Response: Section 304(c)(1)(B) of the MPRSA specifies that NOAA may not terminate any valid lease, permit, license, or right of subsistence use or of access, if the lease, permit, license, or right "is in existence on the date of designation of any national marine sanctuary * * *."

Comment: Treaty secured rights should not require sanctuary certification. Further, NOAA should obligate federal regulators to consider and protect tribal interests when issuing permits which may affect those interests.

Response: Treaty secured rights do not require certification by the Sanctuary program pursuant to

§ 925.5(g). NOAA agrees that pursuant to its trust responsibility to the tribes, it should consider and protect tribal interests when issuing permits. Therefore, §§ 925.9 and 925.11 have been modified accordingly. While NOAA as a trustee urges all other Federal agencies to consider and protect tribal interests, it does not have the legal authority to require other Federal agencies to consider and protect tribal interests when issuing permits pursuant to other regulatory authorities.

Comment: The regulations, exemptions and authority to place conditions on existing permitted activities are unclear.

Response: Section 304(c)(2) of the MPRSA provides NOAA with the right to regulate the exercise of a lease, permit, license, or right of subsistence use or of access existing on the effective date of Sanctuary designation.

Comment: Sanctuary management should be formally coordinated with tribal regulatory and law enforcement authorities through cooperative agreements.

Response: Cooperative agreements will be developed as necessary between NOAA and the tribes regarding regulatory and law enforcement activities.

Comment: The Sanctuary should offer increased enforcement which should be conducted by Sanctuary personnel rather than the U.S. Coast Guard. Clarify the enforcement procedures.

Response: There will be enforcement of Sanctuary regulations through cooperative agreements with the U.S. Coast Guard, NMFS, WDF, the coastal tribes, USFWS, and the National Park Service (NPS). Considering fiscal constraints, level of use, and availability of enforcement personnel working in the field already, NOAA has determined that it is not a high immediate priority to hire Sanctuary enforcement personnel. The Sanctuary must first become fully staffed and operational, and a determination must be made whether additional enforcement personnel are needed. The enforcement procedures will be determined pursuant to the cooperative agreements that are established.

Comment: The broad scope of the discharge prohibition will require a well-coordinated enforcement operation to monitor all discharge and disposal activities from sources on land as well as in offshore, coastal and inland waters over large areas outside of the Sanctuary boundary. It may be impossible to determine the origin of discharges or deposits found in the Sanctuary after the dumping activity has occurred.

Response: The prohibition on discharges from outside the boundary relates to discharges that enter and injure Sanctuary resources. NOAA must establish that discharges not only enter, but injure the resources before enforcement actions will be taken. It will, therefore be desirable for NOAA to undertake a comprehensive monitoring program by which it can determine ecosystem health and use impacts.

Comment: NOAA should impose unlimited liability for spills extended to shipping companies and firms providing original source materials involved in polluting activities.

Response: NOAA is permitted to seek penalties of up to $100,000 per day for a violation pursuant to section 307(c)(1) of the MPRSA (16 U.S.C. 1437(c)(1)), and for natural resource damages pursuant to section 312 of the MPRSA (16 U.S.C. 1443).

Transboundary Coordination

Comment: NOAA should coordinate with other Federal and Canadian authorities to regulate vessel traffic, reduce the risk of oil spills, and eliminate oil and gas drilling in Canadian waters adjacent to the proposed sanctuary. NOAA should encourage an adjacent sanctuary along the west coast of Vancouver Island.

Response: NOAA agrees and is working with the Canadian Coast Guard, the U.S. Coast Guard and the Washington OMS to reduce the risk of oil spills. The regulation of vessel traffic will currently remain with the U.S. and Canadian Coast Guards and the OMS. NOAA will support any Canadian initiative to designate a marine protected area in Canadian waters on the Pacific Coast.

Beach Management Policies

Comment: NOAA should grandfather in the existing beach management policies including allowable beach driving activities.

Response: The boundary of the Sanctuary does not encompass beaches where beach driving is permitted.

Advisory Committee/Decision Making

Comment: NOAA and the State of Washington should work together to determine the composition of the Sanctuary Advisory Committee (SAC). The SAC should include representatives from private landowners, local industry, the county and tribes. The SAC should be based at the local level to oversee operations and help maintain strong local input.

Response: NOAA will work with local user and interest groups and state and local governments to obtain broad representation on the SAC. The law limits the SAC to no more than 15 members.

Comment: The SAC should have the power to direct the Sanctuary manger and set priorities for funding. The SAC decisions should be binding. If the decisions are not binding, then the manager should at least provide a rationale for any actions taken which are directly contrary to the recommendations of the SAC.

Response: The SAC recommendations to the manager will be instrumental in guiding the manager with respect to prioritizing actions. If the manager chooses not to pursue the recommendations of the SAC, a rationale will be provided to the members of the SAC.

Comment: One of the first tasks of the SAC should be to review and update the State of Washington's coastal zone management program to ensure consistency with the Sanctuary management plan. The Sanctuary management plan goals and objectives should also be reviewed.

Response: Prior to designation, the State of Washington will review the FEIS/MP as part of its consistency determination as it relates to Washington's approved coastal zone management program. The WDOE has jurisdiction for the Shoreline Management Act. The SAC will not share that jurisdiction, rather, the SAC will be responsible for reviewing the Sanctuary management plan goals and objectives. The SAC's first priority will be to help determine the five-year Sanctuary operating plan establishing priorities for education, research, monitoring, facilities siting and administration.

Miscellaneous

Comment: Firearms should be controlled or banned within the Sanctuary.

Response: Possession and use of firearms is regulated by State law for public safety purposes. The primary purpose of Sanctuary designation is resource protection.

Management Alternatives/Strategies

Comment: The administrative models being discussed in the Northwest Straits proposal should be considered.

Response: The administrative model identifying NOAA as the lead agency in managing the sanctuary with guidance and assistance from the SAC (which will represent State and local interests) will be implemented in the Olympic Coast National Marine Sanctuary. The administrative model which involves joint administration between NOAA and

the State of Washington was not considered for the Olympic Coast National Marine Sanctuary because the Sanctuary is predominately in Federal waters. One model suggested for the proposed Northwest Straits National Marine Sanctuary focuses on joint administration because the Sanctuary would be located entirely within State waters. NOAA will work closely with the state and counties and other Federal agencies in the administration of the Olympic Coast National Marine Sanctuary.

Comment: The management plan needs to account for tribal sovereignty and jurisdiction with respect to cultural resources, law enforcement and research practices. NOAA needs to recognize the need to coordinate with each tribal entity in the same manner as with the state and its management agencies.

Response: NOAA acknowledges the importance of tribal sovereignty. Nothing in the designation will impact the treaty rights of the coastal tribes. NOAA will consult closely with the tribes on any action that may potentially impact tribal rights or interests.

Comment: NOAA should choose management plan alternative 1 which proposes to gradually phase in program activities and staffing. Staff could be co-located with another Federal agency in Port Angeles, with satellite sites in Klaloch or La Push. National concerns with fiscal restraint support this choice.

Some commenters supported management plan alternative 2 which proposes to set up the sanctuary headquarters and immediately provide full-staffing. Sanctuary headquarters should be located on the coast. The former Makah Air Force Station is one possible location.

Response: NOAA is experiencing the fiscal constraints that all Federal programs are experiencing. NOAA proposes to balance the needs for resource protection and fiscal restraint by phasing in staffing and maximizing cooperative relationships with other agencies and jurisdictions working in the area (e.g., NPS, U.S. Coast Guard, the tribes, and the USFWS) to implement the management plan. The Sanctuary manager will have an office on the Olympic Coast with administrative support facilities in Seattle.

Comment: Implementation of the final management plan must be adequately funded in order to prevent pollution and resource damage.

Response: The level of funding for the first year after Sanctuary designation will depend upon the Sanctuary Program's funding which is authorized and appropriated by Act of Congress. However, the reality of the program's funding situation will require the manager and SAC to identify alternative sources of funding for Sanctuary programs.

Comment: A volunteer program, coordinated by a full-time volunteer coordinator, should be established to assist in implementation of the management plan.

Response: NOAA agrees that the establishment of a volunteer program can assist in implementation of the management plan. The SAC will be influential in determining the priority of hiring a volunteer coordinator.

Comment: The management alternatives should more accurately describe NOAA's comprehensive planning as implemented through a combination of legal management authority over certain specific Sanctuary activities and advisory coordination with other entities managing the remaining essential components.

Response: NOAA agrees. The FEIS/MP outlines the regulations which NOAA is promulgating. The FEIS/MP also outlines the role of the SAC, whose composition is aimed at enhancing the coordination with other entities with management jurisdiction in the Sanctuary.

Comment: The Sanctuary manager should have a great deal of responsibility for setting the Sanctuary budget, as well as assigning funds to local governments for assistance in implementing management plans.

Response: The Sanctuary manager will have primary responsibility for recommending the Sanctuary budget to headquarters. The Sanctuaries and Reserves Division has responsibility for the entire National Marine Sanctuary Program budget, and will work with the site manager to develop the annual program budget. The manager has the discretion to earmark funds to local governments or groups to implement Sanctuary programs.

Comment: Zoning plans should be implemented which accommodate the varying resource management needs within the Sanctuary. Some zoning examples include allowing for the needs of ports to the south, designating areas which would be closed to all consumptive uses on a rotating basis, and zoning specific areas within the sanctuary for the sole purposes of research, recreational use, commercial use and no use.

Response: Zoning is not anticipated as part of the FEIS/MP for the Sanctuary. If NOAA, in consultation with the SAC, believes that zoning would better meet the needs of the program, the management plan and regulations can be amended in accordance with the requirements of the MPRSA, the NEPA and the APA.

Research/Education Protocol

Comment: Research results and data should be shared through existing databases with Federal and state agencies and tribes. The sharing of data should be formalized through cooperative agreements.

Response: NOAA agrees that research results and data should be shared and will pursue appropriate cooperative agreements to ensure this coordination.

Comment: It is unnecessary to severely restrict or eliminate activities such as fishing, commercial vessel activity, dredging and aircraft operation in order to carry out the Sanctuary goals of promoting research and public education.

Response: The primary goal of sanctuary designation is the comprehensive long-term protection of marine resources. Some restrictions are necessary to accomplish this goal. Of the above activities, only dredging is being eliminated within the Sanctuary boundary. Research and education provide additional means to promote the goal of marine resource protection.

Comment: Geophysical exploration should not be prohibited, as the information gathered from this research can benefit coastal communities and academic institutions.

Response: NOAA's emphasis on research within the Sanctuary allows for research which may involve an otherwise prohibited activity (such as alteration of or construction on the seabed) as long as researchers obtain a research permit pursuant to § 925.9 of the Sanctuary regulations. NOAA will determine the environmental consequences of the proposed research, including short and long term effects on marine biota (such as noise which may interfere with cetacean communication) in deciding whether to issue a permit.

Comment: The research program should stress applied research such as research which can facilitate fisheries management, provide information on long-term environmental trends, and provide links between the marine systems and the adjacent terrestrial systems. Providing research results to decision makers at the various governmental levels would be an important link in addressing marine resource problems.

Response: NOAA agrees and has clarified this point in the research section of the management plan.

Comment: Criteria for acceptable research within the Sanctuary should be established prior to formal designation

of the Sanctuary. The criteria should be used in review of research permit applications, and an appeal process should be established in the case of research permit application denial.

Response: Research permit applications will be reviewed on a case-by-case basis and evaluated to determine the potential short and long term impacts of the proposed activities. In addition, § 925.12 of the regulations sets forth the procedures for appealing to the Assistant Administrator the denial of a research permit.

Comment: NOAA should conduct research into the effects of fishing activities on the entire marine system. Fish stocks, species abundance, and monitoring information should be presented to the PFMC.

Response: The National Ocean Service (which includes the Sanctuaries and Reserves Division) and the NMFS have entered into a Memorandum of Understanding outlining the working relationship between the Sanctuary Program and the NMFS. The PFMC will be involved in this agreement, through its relationship with the NMFS. Research which benefits the overall goal of resource protection is addressed within this agreement by highlighting the need for interagency coordination, research and monitoring.

Comment: The benefits of sanctuary designation to the fishing community and others should be clearly articulated. Additionally, connections between the regulations and resource protection should be integrated in the education plan (e.g., establishing warning signs at popular access sites to alert boaters and hikers to the effect of disturbance of pelagic birds and marine mammals.)

Response: NOAA agrees and has clarified the education goals in the Sanctuary management plan. NOAA has articulated the benefits of the Sanctuary program for the fishing community. NOAA will coordinate with the USFWS and the NPS to post warning signs around critical marine bird and mammal habitat.

Comment: NOAA should provide for increased education and interpretation of the shoreline through a variety of media. Educational materials and outreach programs should be developed by pre-existing facilities and organizations on the Olympic Peninsula.

Response: Sanctuary designation will provide for increased education and interpretation of the entire Sanctuary ecosystem. Education materials and outreach programs will be developed in cooperation with existing Federal, tribal, state and local entities.

Issue: Informational Amendments of the DEIS/MP

Biological Amendments

Comment: The discussion of the neretic and shelf edge environments in the DEIS/MP needs to be expanded. The resource assessment must stress the biological richness of the area.

Response: The resource assessment describing the ecosystem of the Sanctuary study area has been expanded in the FEIS/MP.

Comment: Biological resources need to be discussed in terms of ecosystem interactions and not single species descriptions.

Response: NOAA has expanded the discussion to include a description of the study area from an ecosystem perspective.

Socioeconomic

Comment: The FEIS/MP must contain a socioeconomic impact study of the regulations on the affected coastal communities and Tribes. Failure to consider and mitigate these impacts violates the NEPA and Federal Trust responsibility to Indians.

Response: An economic analysis has been included within the FEIS/MP. NOAA is not promulgating regulations that will unduly burden the tribes. The regulations have provisions that recognize treaty secured rights. In addition, NOAA will consult with the Tribes when considering permits affecting proposed development activities in the Sanctuary. NOAA believes that the regulations do not conflict with the economic interests of the Tribes since the regulations offer increased protection for those natural resources critical to the tribal economy.

Comment: The Federal government should investigate the possibility of tax breaks to offset economic impacts of the management plan.

Response: NOAA's actions do not add economic burdens to the area. The issue of tax breaks should be addressed to an individual's representatives in Congress. NOAA does not have the legislative authority to address tax laws.

Supplemental Draft Environmental Impact Statement

Comment: NOAA should submit a supplemental Draft Environmental Impact Statement for the following reasons: (1) The DEIS/MP lacks a satisfactory examination of the socioeconomic impacts of the regulations on the coastal communities; (2) the DEIS/MP contains erroneous information related to port activities in Grays Harbor; (3) some information is missing, outdated, or inaccurate; (4) inadequate definition of the unique environment deserving protection that is identified by the SEL.

Response: NOAA has determined that the matters for which an SEIS has been requested can be addressed in the FEIS/MP. The FEIS/MP addresses the socioeconomic impacts of regulations that could potentially affect the coastal communities in the alternatives and consequences section. Further, the vessel traffic section has been amended substantially to provide a detailed description of the significance of vessel traffic to the coastal communities. Additionally, the description of the marine environment under consideration has been expanded greatly.

Management

Comment: NOAA needs to address or recognize a number of current local and state regulatory controls in place within the shoreline areas.

Response: NOAA has addressed local and state regulatory controls within the shoreline areas. These controls are listed in appendix J.

The following sets forth the text of the Designation Document for the Olympic Coast National Marine Sanctuary.

Designation Document for the Olympic Coast National Marine Sanctuary

Under the authority of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 *et seq.*, the waters off the Olympic Coast of Washington State including the U.S. portion of the Strait of Juan de Fuca west of Koitlah Point, and the submerged lands thereunder, as described in Article II, are hereby designated as the Olympic Coast National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

Article I. Effect of Designation

The Act authorizes the issuance of such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and aesthetic resources and qualities of the Olympic Coast National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities that either will be regulated on the effective date of designation or may have to be regulated at some later date in order to protect Sanctuary resources

and qualities. Listing does not necessarily mean that a type of activity will be regulated; however, if an activity is not listed, it may not be regulated, except on an emergency basis, unless section 1 of Article IV is amended to include the type of activity by the same procedures by which the original designation was made.

Article II. Description of the Sanctuary Area

The Olympic Coast National Marine Sanctuary boundary encompasses approximately 2500 square nautical miles (approximately 8577 sq. kilometers) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington. The Sanctuary boundary extends from Koitlah Point due north to the United States/Canada international boundary seaward to the 100 fathom isobath. The seaward boundary of the Sanctuary approximates the 100 fathom isobath in a southerly direction from the U.S./Canada international boundary to a point due west of the Copalis River, cutting across the heads of Nitnat, Juan de Fuca, and Quinault Canyons.

The shoreward boundary of the Sanctuary is the mean lower low water line when adjacent to Indian reservations and State and county lands. When adjacent to Federally managed lands, the coastal boundary extends to the mean higher high water line. The coastal boundary cuts across the mouths of all rivers and streams. The precise boundary of the Sanctuary is set forth in Appendix A of this Designation Document.

Article III. Characteristics of the Sanctuary Area That Give It Particular Value

The Sanctuary is a highly productive, nearly pristine ocean and coastal environment that is important to the continued survival of several ecologically and commercially important species of fish, seabirds, and marine mammals. Its rugged and undeveloped coastline makes the region one of the more dramatic natural wonders of the coastal United States, paralleling the majestic splendor of such terrestrial counterparts as Yosemite National Park and the Grand Tetons. The region's high biological productivity is fueled by seasonal enhanced upwelling along the edge of the continental shelf, especially at submarine canyons, during periods of high solar radiation.

The diversity of habitats that make up the Sanctuary support a great variety of biological communities. This unusually large range of habitat types include: Offshore islands and rocks; some of the most diverse kelp beds in the world; intertidal pools; erosional features such as rocky headlands, seastacks, and arches; interspersed exposed beaches and protected bays; submarine canyons and ridges; the continental shelf, including a broad shallow plateau extending from the mouth of the Juan de Fuca canyon; and continental slope environments. The numerous seastacks and rocky outcrops along the Sanctuary shoreline, coupled with a large tidal range and wave splash zone, support some of the most diverse and complex intertidal zones in the United States.

The Sanctuary provides an essential habitat for a wide variety of marine mammals and birds, and is of particular interest due to the presence of endangered and threatened species that live or migrate through the region. Twenty seven species of marine mammals are reported to breed, rest within, or migrate offshore of the Olympic Peninsula. Of particular interest is the migration route of the endangered California gray whale, the threatened northern sea lion, the occasional presence of the endangered right, fin, sei, blue, humpback, and sperm whales, and the reintroduced resident population of sea otters.

In addition, the seabird colonies of Washington's outer coast are among the largest in the continental United States and include a number of species listed as endangered or threatened including the short-tailed albatross, peregrine falcon, brown pelican, Aleutian Canada goose, marbled murrelet, and one of the largest populations of bald eagles in the continental United States.

The high biological productivity of the coastal and offshore waters in the Sanctuary support valuable fisheries that contribute significantly to the State and tribal economies. The commercially important species of fish include five species of salmon, groundfish, and shellfish.

In addition to the Sanctuary's value with respect to its biological resources, the region encompasses significant historical resources including Indian village sites, ancient canoe runs, petroglyphs, Indian artifacts, and numerous shipwrecks.

The diversity and richness of marine resources suggests that the marine sanctuary designations will provide exceptional opportunities for scientific research in the areas of species interactions, population dynamics, physiological ecology, linkages between terrestrial and aquatic ecosystems, and marine anthropology. The scientific research encouraged by the Sanctuary management plan will, in turn, help support an intensive public education and awareness program that will address the diverse, complex, and sensitive ecosystems in Washington's coastal and oceanic environments.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area:

a. Exploring for, developing, or producing oil, gas or minerals (e.g., clay, stone, sand, metalliferous ores, gravel, non-metalliferous ores or any other solid material or other solid matter of commercial value) within the Sanctuary;

b. Discharging or depositing from within the boundary of the Sanctuary, any material or other matter;

c. Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter;

d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of, a marine mammal, sea turtle, seabird, historical resource or other Sanctuary resource;

e. Drilling into, dredging, or otherwise altering the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material or other matter on the seabed of the Sanctuary;

f. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, moved, caught, collected or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource;

g. Flying a motorized aircraft above the Sanctuary;

h. Operating a vessel (i.e., watercraft of any description in the Sanctuary;

i. Interfacing with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 2. Emergencies

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any

and all activities, including those not listed in Section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use of access, may be terminated by the Secretary of Commerce or designee as a result of this designation. The Secretary of Commerce or designee, however, may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated.

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) Exploration for, development or production of oil, gas or minerals within the Sanctuary; (2) the discharge of primary treated sewage (except for regulation, pursuant to section 304(c)(2) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); (3) the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; or (4) bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of This Designation

The terms of designation, as defined under Section 304(a) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings consultation with interested Federal, State, and local agencies, review by the appropriate Congressional committees and the Governor of the State of Washington, and approval by the Secretary of Commerce or designee.

APPENDIX A.—OLYMPIC COAST NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES.

[Based on North American Datum of 1983]

Point	2500 square nautical miles	
	Latitude	Longitude
1	47°07′45″	124°11′02″
2	47°07′45″	124°58′12″
3	47°35′50″	125°00′00″
4	47°40′05″	125°04′44″
5	47°50′01″	125°05′42″
6	47°57′13″	125°29′13″
7	48°07′33″	125°38′20″
8	48°14′46″	125°40′59″
9	48°20′12″	125°22′59″
10	48°27′49″	125°06′04″
11	48°29′59″	124°59′13″
12	48°30′19″	124°50′42″
13	48°29′38″	124°43′41″
14	48°27′50″	124°38′13″
15	48°23′17″	124°38′13″

III. Summary of Final Management Plan

The FEIS/MP for the Olympic Coast National Marine Sanctuary sets forth the Sanctuary's location and provides details on the most important resources and uses of the Sanctuary. The FEIS/MP describes the resources and uses of the Sanctuary. The FEIS/MP describes the resource protection, research, education and interpretive programs, and establishes goals and objectives to be accomplished by each program. The FEIS/MP includes a detailed discussion, by program area, of agency roles and responsibilities.

The goals and objectives for the Sanctuary are:

Resource Protection

The highest priority management goal is to protect the marine environment, resources and qualities of the Sanctuary. The specific objectives of protection efforts are to:

(1) Coordinate policies and procedures among agencies sharing responsibility for protection and management of resources;

(2) Encourage participation by interested agencies and organizations in the development of procedures to address specific management concerns (e.g., monitoring and emergency-response programs);

(3) Develop an effective and coordinated program for the enforcement of Sanctuary regulations;

(4) Enforce Sanctuary regulations in addition to other regulations already in place;

(5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives, through an educational/interpretive program stressing resource sensitivity and wise use;

(6) Ensure that the water quality of the coastal and ocean waters off the Olympic Peninsula is maintained at a level consonant with Sanctuary designation;

(7) Establish mechanisms for coordination among all the agencies participating in Sanctuary management;

(8) Ensure that the appropriate management agencies incorporate research results and scientific data into effective resource protection strategies; and

(9) Reduce threats to Sanctuary resources and qualities.

Research Program

Effective management of the Sanctuary requires the implementation of a Sanctuary research program. The purpose of Sanctuary research activities is to improve understanding of the marine environment off the Olympic peninsula, its resources and qualities, and to resolve specific management problems, some of which may involve resources common to both the marine and upland freshwater environments. Research results will be used in interpretive programs for visitors, for those living on the Peninsula, and working adjacent to or in the Sanctuary, others interested in the Sanctuary, as well as for protection and management of resources and qualities.

Specific objectives of the research program are to:

(1) Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improve management of the Sanctuary;

(2) Incorporate research results into the interpretive/education program in a format useful for the general public;

(3) Focus and coordinate data collection efforts on the physical, chemical, geological and biological oceanography of the Sanctuary;

(4) Encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes;

(5) Initiate a monitoring program to assess environmental changes as they occur due to natural and human processes;

(6) Identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; and

(7) Encourage information exchange among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management.

Education Program

The goal for the education program is to improve public awareness and understanding of the significance of the Sanctuary resources and qualities to foster a heightened sense of stewardship for Sanctuary resources and qualities.

The management objectives designed to meet this goal are to:

(1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability;

(2) Broaden support for the Sanctuary management by offering programs suited to visitors with a range of diverse interests;

(3) Foster public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and

(4) Collaborate with other organizations to provide educational services complementary to the Sanctuary program.

Visitor Use

The Sanctuary goal for visitor management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives are to:

(1) Provide relevant information about Sanctuary regulations, use policies and standards;

(2) Collaborate with public and private organizations in promoting compatible uses of the Sanctuary;

(3) Encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities; and

(4) Monitor and assess the levels of use to identify and control potential degradation of resources and qualities and minimize potential user conflicts.

The Sanctuary headquarters will be located in Port Angeles, WA with an initial satellite office near Forks, WA.

IV. Summary of Regulations

The regulations set forth the boundary of the Sanctuary; prohibit a relatively narrow range of activities; set forth procedures for applying for national marine sanctuary permits to conduct prohibited activities; set forth certification procedures for existing leases, licenses, permits, other authorizations or rights authorizing the conduct of a prohibited activity; set forth notification and review procedures for applications for licenses, permits, or other authorizations to conduct a prohibited activity; set forth the maximum per-day penalties for violating Sanctuary regulations; and set forth procedures for administrative appeals.

The regulations are codified in part 925 of title 15, Code of Federal Regulations.

Section 925.1 sets forth as the purpose of the regulations to implement the designation of the Olympic Coast National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

Section 925.2 and Appendix A following § 925.12 set forth the boundary of the Sanctuary.

Section 925.3 defines various terms used in the regulations. Other terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the MPRSA.

Section 925.4 allows all activities except those prohibited by § 925.5 to be undertaken subject to the requirements of any emergency regulation promulgated pursuant to § 925.6, subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by Section 312 of the Act.

Section 925.5 prohibits a variety of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted. However, any of the prohibited activities except for:

(1) The exploration for, development or production of oil, gas or minerals in the Sanctuary;

(2) The discharge of primary-treated sewage within the Sanctuary (except pursuant to certification under § 925.10, of a valid authorization in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction);

(3) The disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; and

(4) Bombing activities within the Sanctuary could be conducted lawfully if:

(1) The activity is necessary to respond to an emergency threatening life, property, or the environment (not applicable to the prohibitions against takings and interference with law enforcement); necessary for valid law enforcement purposes; authorized by a National Marine Sanctuary permit issued under § 925.9 (not applicable to the prohibition against interference with law enforcement); or authorized by a Special Use Permit issued under Section 310 of the Act (not applicable to the prohibition against interference with law enforcement);

(2) With regard to Department of Defense activities: (A) the activity is an existing military activity including hull integrity tests and other deep water tests; live firing of guns, missiles, torpedoes, and chaff; activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and anti-submarine warfare operations, or (B) the activity is a new activity and exempted by the Director of the Office of Ocean and Coastal Resource Management or designee after consultation between the Director or designee and the Department of Defense. The regulations require that the Department of Defense carry out its activities in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities and that it, in the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by it, promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality. The final regulation regarding Department of Defense activities differs from the proposed regulation principally by prohibiting all bombing activities within the Sanctuary;

(3) The activity is authorized by a certification by the Director of the Office of Ocean and Coastal Resource Management or designee under § 924.10 of a valid lease, permit, license or other authorization issued by any Federal, State or local authority of competent jurisdiction and in existence on (or conducted pursuant to any valid right of subsistence use or access in existence on) the effective date of this designation, subject to complying with any terms and conditions imposed by the Director or designee as he or she deems necessary to achieve the purposes for which the Sanctuary was designated, except that treaty rights of a Federally recognized Indian tribe may be exercised by the tribe without certification by the Director or designee;

(4) The activity is authorized by a valid lease, permit, license, or other authorization issued by any Federal, State or local authority of competent

jurisdiction after the effective date of Sanctuary designation, provided that the Director of the Office of Ocean and Coastal Resource Management or designee was notified of the application in accordance with the requirements of § 925.11, the applicant complies with the requirements of § 925.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

The first activity prohibited is exploring for, developing or producing oil, gas or minerals within the Sanctuary. With regard to oil and gas, this regulation implements the requirements of Section 2207 of the Oceans Act of 1992 which prohibits "oil or gas leasing or pre-leasing activity [from being] conducted within the area designated as the Olympic Coast National Marine Sanctuary * * *." The resources and qualities of the coastal and offshore waters of the Olympic Peninsula, particularly the sea birds and pinnipeds that use the haul-out sites, kelp forests and rocks along the Olympic Coast, and the high water quality of the area, are especially vulnerable to oil and gas activities in the area. A prohibition on oil and gas exploration, development and production activities within the Sanctuary boundary partially protects Sanctuary resources and qualities from oil and gas activities. Only partial protection will be provided due to the remaining threat from oil and gas from vessel traffic transiting through and near the Sanctuary, particularly oil tankers not operating in accordance with the voluntary agreement of the Western States Petroleum Association to remain 50 nautical miles from shore. A prohibition on mineral activities within the Sanctuary is consistent with the prohibition on alteration of or construction on the seabed as discussed below. "Mineral" is defined to mean clay, stone, sand, gravel, metalliferous ore, nonmetalliferous ore, or any other solid material or other solid matter of commercial value. The prohibition on oil, gas and mineral activities additionally will prevent the negative effects of physical and possible chemical disturbances associated with extraction activities, e.g., destruction of benthic biota; resuspension of fine sediments; interference with filtering, feeding and respiratory functions of marine organisms; loss of food sources and habitats; and lowered photosynthesis and oxygen levels.

The second activity prohibited is depositing or discharging from within the boundary of the Sanctuary any material or other matter except:

(1) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(2) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with Section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322 *et seq.*;

(3) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by Section 312 of the FWPCA) excluding oily-wastes from bilge pumping;

(4) Engine exhaust; and

(5) Dredge spoil in connection with beach nourishment projects related to harbor maintenance activities.

This prohibition is necessary to protect Sanctuary resources and qualities from the effects of pollutants deposited or discharged into the Sanctuary.

After expiration of current permits, discharges from municipal treatment plants will be subject to the review process of § 925.11. At a minimum, secondary treatment will be required. Depending on the risk to Sanctuary resources and qualities, greater treatment may be required. The intent of this prohibition is to protect Sanctuary resources and qualities from the effects of land and sea originating pollutants.

The third activity prohibited is depositing or discharging, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except for the five exclusions discussed above for the second prohibited activity.

The fourth activity prohibited is moving, removing or injuring or attempting to move, remove or injure a Sanctuary historical resource. Historical resources in the marine environment are fragile, finite and non-renewable. This prohibition is designed to protect these resources so that they may be researched and information about their contents and type made available for the benefit of the public. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

Historical resources located within the Sanctuary that are of significance to an Indian tribe(s) (e.g., submerged Indian villages) will be managed so as to protect other Sanctuary resources and the interests of the governing body of an Indian tribe(s) in such historical resources. If an Indian tribe determines that a historical resource of tribal significance may be researched, excavated or salvaged, the Sanctuary manager may issue a Sanctuary permit if the criteria for issuance have been met (See § 925.9). Removal or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains.

The fifth activity prohibited is drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except if any of the above results incidentally from: (1) Anchoring vessels; (2) traditional fishing operations; (3) installation of navigation aids; (4) harbor maintenance in the areas necessarily associated with Federal Projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and harbors, and repair, replacement or rehabilitation of breakwaters and jetties; (5) construction, repair, replacement, enhancement or rehabilitation of boat launches, docks or piers and associated breakwaters and jetties; or (6) beach nourishment projects related to harbor maintenance activities. Federal projects are any water resources development projects conducted by the U.S. Army Corps of Engineers or operating under a permit or authorization issued by the Corps of Engineers and authorized by Federal law.

The intent of this prohibition is to protect the resources and qualities of the Sanctuary from the harmful effects of activities such as, but not limited to, archaeological excavations, drilling into the seabed, strip mining, laying of pipelines and outfalls, and offshore commercial development, which may disrupt and/or destroy sensitive marine benthic habitats, such as kelp beds, invertebrate populations, fish habitats and estuaries.

The sixth activity prohibited is taking marine mammals, sea turtles or seabirds in or above the Sanctuary, except as authorized by NMFS or USFWS under the authority of the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or pursuant to a treaty with an Indian tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA and

MBTA, to the extent that they apply. The term "taking" includes all forms of harassment. The MMPA, ESA and MBTA prohibit the taking of species protected under those acts. The prohibition overlaps with the MMPA, ESA and MBTA but also extends protection for Sanctuary resources on an environmentally holistic basis and provides a greater deterrent with civil penalties of up to $100,000 per taking. The prohibition covers all marine mammals, sea turtles and seabirds in or above the Sanctuary. The prohibition recognizes existing treaty rights to hunt marine mammals, sea turtles and seabirds to the extent that the treaty rights have not been abrogated by provisions of the MMPA, ESA or MBTA.

The seventh activity prohibited is flying motorized aircraft at less than 2,000 feet (610m) both above the Sanctuary within one nautical mile of the Flattery Rocks, Quillayute Needles or Copalis National Wildlife Refuge, or within one nautical mile seaward of the coastal boundary of the Sanctuary, except as necessary for valid law enforcement purposes, for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe. This prohibition is designed to limit potential noise impacts, particularly those that might startle hauled-out seals and sea lions, and colonial seabirds along the shoreline margins of the Sanctuary.

Both the eighth and ninth prohibitions serve to facilitate enforcement actions for violations of Sanctuary regulations. The eighth prohibition is the possession within the Sanctuary of any historical resource or marine mammal, sea turtle or seabird, regardless of where the resource was taken, except in compliance with the MMPA, ESA and MBTA and the ninth prohibition is interfering with, obstructing, delaying or preventing investigations, searches, seizures or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 925.6 authorizes the regulation, including prohibition, on a temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury.

Section 925.7 sets for the maximum statutory civil penalty for violating a regulation—$100,000. Each day of a continuing violation constitutes a separate violation. Section 925.8 repeats the provision in section 312 of the Act that any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury. The purpose of these sections is to draw the public's attention to the liability for violating a Sanctuary regulation or the Act.

Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear in 15 CFR part 904.

Section 925.9 sets forth the procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension and revocation of such permits. A permit may be granted by the Director of the Office for Ocean and Coastal Resource Management or designee if he or she finds that the activity will not substantially injure Sanctuary resources and qualities and will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in the management of the Sanctuary; further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or promote the welfare of any Indian tribe. In deciding whether to issue a permit, the Director or designee may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and the duration of its effects, the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, the cumulative effects of the activity, the end value of the activity, and the impacts of the activity on adjacent Indian tribes. In addition, the Director or designee is authorized to consider any other factors she or he deems appropriate.

Section 925.10 sets forth procedures for requesting certification of leases, licenses, permits, other authorizations, or rights in existence on the date of Sanctuary designation authorizing the conduct of an activity prohibited under paragraphs (a)(2)–(8) of § 925.5. Pursuant to paragraph (f) of § 925.5, the prohibitions in paragraphs (a)(2)–(8) of § 925.5 do not apply to any activity authorized by a valid lease, permit, license, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with the requirements of § 925.10 (e.g., notifies the Director or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director or designee as she or he deems necessary to achieve the purposes for which the Sanctuary was designated.

Section 925.10 allows the holder 90 days from the effective date of Sanctuary designation to request certification. The holder is allowed to conduct the activity without being in violation of the prohibitions in paragraphs (a)(2)–(8) of § 925.5 with regard to which the holder is requesting certification pending final agency action on his or her certification request, provided the holder has complied with all requirements of § 925.10.

Section 925.10 also allows the Director or designee to request additional information from the holder and to seek the views of other persons.

As a condition of certification, the Director or designee will impose such terms and conditions on the exercise of such lease, permit, license, other authorization or right as she or he deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary's authority under section 304(c)(2) of the Act. The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 925.12.

Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, other authorization or right is subject to the provisions of § 925.11.

Section 925.11 states that consistent with paragraph (g) of § 925.5, the prohibitions of paragraphs (a)(2)–(8) of § 925.5 do not apply to any activity authorized by any valid lease, permit, license, or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the effective date of Sanctuary designation, whichever is later, that the applicant is in compliance with the other provisions of § 925.11, that the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and that the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities. Where the applicant is the governing body of an Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and the U.S. trust responsibility to the affected tribes.

Section 925.11 allows the Director or designee to request additional information from the applicant and to seek the views of other persons.

An application for an amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of § 925.11.

The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in § 925.12.

Section 925.12 sets forth the procedures for appealing to the Assistant Administrator or designee actions of the Director or designee with respect to:

(1) The granting, conditioning, amendment, denial, suspension or revocation of a National Marine Sanctuary permit under § 925.9 or a Special Use permit under Section 310 of the Act;

(2) The granting, denial, conditioning, amendment, suspension or revocation of a certification under § 925.10; or

(3) The objection to issuance or the imposition of terms and conditions under § 925.11.

Prior to conditioning the exercise of existing leases, permits, licenses, other authorizations or rights or conditioning or objecting to proposed authorizations, NOAA intends to consult with relevant issuing agencies as well as owners, holders or applicants.

NOAA's policy is to encourage best available management practices to minimize non-point source pollution entering the Sanctuary and, for municipal sewage discharge, to require, at a minimum, secondary treatment and sometimes tertiary treatment or more, depending on predicted effects on Sanctuary resources and qualities.

Section 925.13 has been added which requires the Director to consult with state, local and tribal governments regarding areas of mutual concern, including Sanctuary programs, permitting activities, development and threats to Sanctuary resources. This section also requires the Director to enter into memorandums of understanding with such governments when requested regarding such consultations.

V. Miscellaneous Rulemaking Requirements

Regulatory Flexibility Act

The regulations in this notice allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. The procedures in these regulations for applying for National Marine Sanctuary permits to conduct prohibited activities, for requesting certifications for pre-existing leases, licenses, permits, other authorizations or rights authorizing the conduct of a prohibited activity and for notifying NOAA of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity will all act to lessen any adverse economic effect on small entities. The regulations, in total, will not have a significant economic impact on a substantial number of small entities, and when they were proposed the General Counsel of the Department of Commerce so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This rule contains collection of information requirements subject to the requirements of the Paperwork Reduction Act (Pub. L. 96–511). The collection of information requirements contained in the rule have been reviewed by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act and have been approved under OMB Control No. 0648–0141. Comments from the public on the collection of information requirements contained in this rule are invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (06480141) Washington, DC 20503 (Attn: Desk Officer for NOAA) and to Richard A. Roberts, room 724, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

A Federalism Assessment (FA) was prepared for the proposed designation, draft management plan and proposed implementing regulations. The FA concluded that all were fully consistent with the principles, criteria and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with Section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a DEIS/MP was prepared for the designation and proposed regulations. As required by Section 304(a)(2) of the Act, the DEIS/MP included the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundary of the area proposed to be designated, and the existing and potential uses and resources of the area. Copies of the DEIS/MP were made available for public review on September 20, 1991, with comments due on December 13, 1991. Public hearings were held in Port Angeles, Seattle, Olympia, Aberdeen, Seaview and Washington, DC from November 7 to 20, 1991. All comments were reviewed and, where appropriate, incorporated into the FEIS/MP and these regulations. Copies of the FEIS/MP are available upon request (see address section).

Executive Order 12630

This rule does not have takings implications within the meaning of Executive Order 12630 sufficient to require preparation of a Takings Implications Assessment under that order. It would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion or deprivation. While the prohibition on the exploration, development and

production of oil, gas and minerals from the Sanctuary might have a takings implication if it abrogated an existing lease for OCS tracts within the Sanctuary or an approval of an exploration or development and production plan, no OCS leases have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

Federal Domestic Assistance Catalog Number 11.429
Marine Sanctuary Program

List of Subjects in 15 CFR Part 925

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: May 5, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR chapter IX is amended as follows:

Part 925 is added to subchapter B to read as follows:

PART 925—OLYMPIC COAST NATIONAL MARINE SANCTUARY

Sec.
925.1 Purpose.
925.2 Boundary.
925.3 Definitions.
925.4 Allowed activities.
925.5 Prohibited activities.
925.6 Emergency regulations.
925.7 Penalties for violations or regulations.
925.8 Response costs and damages.
925.9 National Marine Sanctuary permits—application procedures and issuance criteria.
925.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity.
925.11 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.
925.12 Appeals of administrative action.
925.13 Consultations with the state, affected Indian tribes and other affected local authorities.

Appendix A to Part 925—Olympic Coast National Marine Sanctuary Boundary Coordinates

Authority: Sections 302, 303, 304, 305, 306, 307, 310 and 312 of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et seq.*).

§ 925.1 Purpose.

The purpose of the regulations in this Part is to implement the designation of the Olympic Coast National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

§ 925.2 Boundary.

(a) The Olympic Coast National Marine Sanctuary consists of an area of approximately 2500 square nautical miles (approximately 8577 sq. kilometers) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

(b) The Sanctuary boundary extends from Koitlah Point due north to the United States/Canada international boundary. The Sanctuary boundary then follows the U.S./Canada international boundary seaward to the 100 fathom isobath. The seaward boundary of the Sanctuary approximates the 100 fathom isobath in a southerly direction from the U.S./Canada international boundary to a point due west of the mouth of the Copalis River cutting across the heads of Nitnat, Juan de Fuca and Quinault Canyons. The coastal boundary of the Sanctuary is the mean higher high water line when adjacent to Federally managed lands cutting across the mouths of all rivers and streams, except where adjacent to Indian reservations, state and county owned lands; in such case, the coastal boundary is the mean lower low water line. La Push harbor is excluded from the Sanctuary boundary shoreward of the International Collision at Sea regulation (Colreg.) demarcation lines. The precise boundary of the Sanctuary is set forth in appendix A to this part.

§ 925.3 Definitions.

(a) The following terms are defined for the purposes of this part:

Act means Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 et seq.).

Administrator or *Under Secretary* means the Administrator of the National Oceanic and Atmospheric Administration/Under Secretary of Commerce for Oceans and Atmosphere.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Director means the Director of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

Effective date of Sanctuary designation means the date the regulations implementing the designation of the Sanctuary (the regulations in this part) become effective.

Federal project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or authorization issued by the Corps of Engineers and authorized by Federal law.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts and objects significantly associated with or representative of earlier people, cultures and human activities and events. Historical resources include historical properties as defined in the National Historic Preservation Act, as amended, and implementing regulations, as amended.

Indian reservation means a tract of land set aside by the Federal Government for use by a Federally recognized American Indian tribe and includes, but is not limited to, the Makah, Quileute, Hoh and Quinault Reservations.

Indian tribe means any American Indian tribe, band, group, or community recognized by the Secretary of the Interior.

Injure means to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of, and includes, but is not limited to, to cause the loss of or to destroy.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other solid matter of commercial value.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Sanctuary means the Olympic Coast National Marine Sanctuary.

Sanctuary quality means any particular and essential characteristic of the Sanctuary, including, but not limited to, water, sediment and air quality.

Sanctuary resource means any living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or aesthetic value, including, but not limited to, the

substratum of the waters off the Olympic Peninsula, bottom formations, marine plants and algae, invertebrates, plankton, fish, birds, turtles, marine mammals and historical resources.

Take or *taking* means: (1) For any marine mammal, sea turtle or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, the term means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct;

(2) For any other marine mammal, sea turtle or seabird, to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct.

(3) For the purpose of both paragraphs (1) and (2) of this definition, the term includes, but is not limited to, collecting any dead or injured marine mammal, sea turtle or seabird, or any part thereof; restraining or detaining any marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; tagging any sea turtle, marine mammal or seabird; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any marine mammal, sea turtle or seabird.

Traditional fishing means fishing using a commercial or recreational fishing method that has been used in the Sanctuary before the effective date of Sanctuary designation, including the retrieval of fishing gear.

Treaty means a formal agreement between the United States Government and an Indian tribe.

Vessel means a watercraft of any description capable of being used as a means of transportation in/on the waters of the Sanctuary.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.2 and/or in the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

§ 925.4 Allowed activities.

All activities except those prohibited by § 925.5 may be undertaken subject to any emergency regulations promulgated pursuant to § 925.6, subject to all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act (see § 925.8).

§ 925.5 Prohibited activities.

(a) Except as specified in paragraphs (c) through (h) of this § 925.5, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.

(2) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(ii) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with Section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA) 33 U.S.C. 1322 *et seq.*;

(iii) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by Section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(iv) Engine exhaust; or

(v) dredge spoil in connection with beach nourishment projects related to harbor maintenance activities.

(3) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(2) (i) through (v) of this § 925.5, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

(5) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with Federal projects in existence on the effective date of Sanctuary designation, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties;

(v) Construction, repair, replacement or rehabilitation of boat launches, docks or piers, and associated breakwaters and jetties; or

(vi) Beach nourishment projects related to harbor maintenance activities.

(6) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 703 *et seq.*, or pursuant to any treaty with an Indian tribe to which the United States is a party, provided that the treaty right is exercised in accordance with the MMPA, ESA and MBTA, to the extent that they apply.

(7) Flying motorized aircraft at less than 2,000 feet both above the Sanctuary within one nautical mile of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, or within one nautical mile seaward from the coastal boundary of the Sanctuary, except for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from) any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the MMPA, ESA or MBTA, to the extent that they apply.

(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The regulations in this part apply to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions and other international agreements to which the United States is a party.

(c) The prohibitions in paragraphs (a) (2) through (5), (7) and (8) of this § 925.5 do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(d) The prohibitions in paragraphs (a) (2) through (5), (7) and (8) of this § 925.5 do not apply to activities necessary for valid law enforcement purposes.

(e)(1) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. Except as provided in paragraph (e)(2) of this § 925.5, the prohibitions in paragraphs (a) (2) through (8) of this § 925.5 do not apply to the following military activities performed by the Department of Defense in W–237A, W237–B, and Military Operating Areas Olympic A and B in the Sanctuary:

(i) Hull integrity tests and other deep water tests;

(ii) Live firing of guns, missiles, torpedoes, and chaff;

(iii) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and

(iv) Anti-submarine warfare operations.

New activities may be exempted from the prohibitions in paragraphs (a)(2) through (8) of this § 945.5 by the Director or designee after consultation between the Director or designee and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (e)(1).

(2) The Department of Defense is prohibited from conducting bombing activities within the Sanctuary.

(3) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions in paragraphs (a) (2) through (8) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 925.9 or a Special Use permit issued pursuant to Section 310 of the Act.

(g)(1) The prohibitions in paragraphs (a) (2) through (8) of this § 925.5 do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with § 925.10 and with any terms and conditions on the exercise of such lease, permit, license, other authorization or right imposed by the Director or designee as a condition of certification as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(2) Members of a federally recognized Indian tribe may exercise aboriginal and treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this Part. The Director may consult with the governing body of a Tribe regarding ways the Tribe may exercise such rights consistent with the purposes of the Sanctuary.

(h) The prohibitions in paragraphs (a) (2) through (8) of § 925.5 do not apply to any activity authorized by any lease, permit, license, or other authorization issued after the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 925.11, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(i) Notwithstanding paragraphs (f) and (h) of this § 925.5, in no event may the Director or designee issue a National Marine Sanctuary permit under § 925.9 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 925.10, of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

§ 925.6 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities are subject to immediate temporary regulation, including prohibition.

§ 925.7 Penalties for violations of regulations.

(a) Each violation of the Act, any regulation in this Part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear in 15 CFR part 904.

§ 925.8 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury.

§ 925.9 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by paragraphs (a) (2) through (8) of § 925.5 if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this § 925.9.

(b) Applications for such permits should be addressed to the Director of the Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Building 4, Silver Spring, MD 20910. An application must include a detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed. The qualifications and experience of all personnel must be set forth in the application. The application must set forth the potential effects of the activity on Sanctuary resources and qualities. Copies of all other required licenses, permits, approvals or other authorizations must be attached.

(c) Upon receipt of an application, the Director or designee may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons.

(d) The Director or designee, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by paragraphs (a) (2) through (8) of § 925.5, if the Director or designee finds that the activity will not substantially injure Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or promote the welfare of any Indian tribe adjacent to the Sanctuary. In deciding whether to issue a permit, the Director or designee may consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; the end value of the activity; and the impacts of the activity on adjacent Indian tribes. Where the issuance or denial of a permit is requested by the governing body of an Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the tribe. The Director or designee may also deny a permit application pursuant to this § 925.9, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of these regulations. (Procedures governing permit denials for enforcement reasons are set forth in subpart D of 15 CFR part 904). In addition, the Director or designee may consider such other factors as he or she deems appropriate.

(e) A permit issued pursuant to this § 925.9 is nontransferable.

(f) The Director or designee may amend, suspend or revoke a permit issued pursuant to this section for good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(g) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(h) The Director or designee may, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(i) The Director or designee may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

(j) The Director or designee shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe.

(k) Removal, or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry onto a significant cultural site designated by a tribal governing body, the Director shall acquire the express written consent of the governing body of the tribe or tribes to which such cultural site pertains.

(l) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 925.12.

§ 925.10 Certification of pre-existing leases, licenses, permits, approvals, other authorizations—or rights to conduct a prohibited activity.

(a) The prohibitions set forth in paragraphs (a) (2) through (8) of § 925.5 do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that:

(1) The holder of such authorization or right notifies the Director or designee, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 925.10; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director or designee to achieve the purposes for which the Sanctuary was designated.

(b) The holder of a valid lease, permit, license, or other authorization in existence on the effective date of sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or of any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by paragraphs (a) (2) through (8) of § 925.5 may conduct the activity without being in violation of § 925.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 925.10.

(c) Any holder of a valid lease, permit, license, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation, may request the Director or designee to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited by (a) (l) through (8) of § 925.5.

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; Attn: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Building 4, Silver Spring, MD 20910. A copy of the lease, permit, license, or other authorization must accompany the request.

(e) The Director or designee may request additional information from the certification requester as he or she deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(f) The Director or designee may amend any certification made under this § 925.10 whenever additional information becomes available justifying such an amendment.

(g) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this § 925.10, in writing, to both the holder of the certified lease, permit, license, approval, other authorization or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this § 925.10 may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending or revoking any certification in accordance with the procedures set forth in § 925.12.

(j) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation of permit, license, approval, other authorization or right is subject to the provisions of § 925.11.

§ 925.11 Notification and review of applications for leases, licenses, permits, or other authorizations to conduct a prohibited activity.

(a) The prohibitions set forth in paragraphs (a) (2) through (8) of § 925.5 do not apply to any activity authorized by any valid lease, permit, license, or other authorization issued after the effective date of Sanctuary designation by any Federal, State or local authority of competent jurisdiction, provided that:

(1) The applicant notifies the Director or designee, in writing, of the application for such authorization (and of any application for an amendment, renewal or extension of such authorization) within fifteen (15) days of the date of application or of the effective date of Sanctuary designation, whichever is later;

(2) The applicant complies with the other provisions of this § 925.11;

(3) The Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal or extension); and

(4) The applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for a lease, permit, license or other authorization from any Federal, State or local authority (or for an amendment, renewal or extension of such authorization) may request the Director or designee to issue a finding as to whether the activity for which an application is intended to be made is prohibited by paragraphs (a) (2) through (8) of § 925.5.

(c) Notifications of filings of applications and requests for findings should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East West Highway, Building 4, Silver Spring, MD 20910. A copy of the application must accompany the notification.

(d) The Director or designee may request additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the application.

(e) The Director or designee shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect thereto, the Director or designee shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources and qualities. The Director or designee shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed necessary to protect Sanctuary resources and qualities. Where the applicant is the governing body of an Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and the United States' trust responsibility to the affected tribes.

(f) The Director or designee may amend the terms and conditions deemed necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this section may be extended by the Director or designee for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in § 925.12.

§ 925.12 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a § 925.9 National Marine Sanctuary permit, an applicant for, or a holder of, a section 310 of the Act Special Use permit, a § 925.10 certification requester or a § 925.11 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designee:

(1) The grant, denial, conditioning, amendment, suspension or revocation by the Director or designee of a National Marine Sanctuary or Special Use permit;

(2) The conditioning, amendment, suspension or revocation of a certification under § 925.10; or

(3) The objection to issuance or the imposition of terms and conditions under § 925.11.

(b) An appeal under paragraph (a) of this § 925.12 must be in writing, state the action(s) by the Director or designee appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director or designee. Appeals should be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Building 4, Silver Spring, MD 20910.

(c) While the appeal is pending, appellants requesting certification pursuant to § 925.10 who are in compliance with such section may continue to conduct their activities without being in violation of the prohibitions in paragraphs (a) (2) through (8) of § 925.5 with regard to which they are requesting certification. All other appellants may not conduct their activities without being subject to the prohibitions in paragraphs (a) (1) through (9) of § 925.5.

(d) The Assistant Administrator or designee may request the appellant to submit such information as the Assistant Administrator or designee deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator or designee within 45 days of the postmark date of

the request. The Assistant Administrator may seek the views of any other persons. The Assistant Administrator or designee may hold an informal hearing on the appeal. If the Assistant Administrator or designee determines that an informal hearing should be held, the Assistant Administrator or designee may designate an officer before whom the hearing shall be held. The hearing officer shall give notice in the **Federal Register** of the time, place and subject matter of the hearing. The appellant and the Director or designee may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or designee.

(e) The Assistant Administrator or designee shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director or designee and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator or designee shall notify the appellant of the final decision and the reason(s) therefore in writing. The Assistant Administrator or designee's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in or established under this § 925.12 other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator, designee or hearing officer for good cause.

§ 925.13 Consultation with the state, affected Indian tribes and other affected local authorities.

The Director shall regularly consult with the State of Washington, the governing bodies of tribes with reservations adjacent to the Sanctuary, and adjacent county governments regarding areas of mutual concern, including Sanctuary programs, permitting, activities, development, and threats to Sanctuary resources. The Director shall, when requested by such governments, enter into a memorandum of understanding regarding such consultations.

APPENDIX A TO PART 925—OLYMPIC COAST NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Based on North American Datum of 1983]

Point	2500 square nautical miles	
	Latitude	Longitude
1	47°07′45″	124°11′02″
2	47°07′45″	124°58′12″
3	47°35′05″	125°00′00″
4	47°40′05″	125°04′44″
5	47°50′01″	125°05′42″
6	47°57′13″	125°29′13″
7	48°07′33″	125°38′20″
8	48°14′46″	125°40′59″
9	48°20′12″	125°22′59″
10	48°27′49″	125°06′04″
11	48°29′59″	124°59′13″
12	48°30′19″	124°50′42″
13	48°29′38″	124°43′41″
14	48°27′50″	124°38′13″
15	48°23′17″	124°38′13″

[FR Doc. 94–11389 Filed 5–10–94; 8:45 am]

BILLING CODE 3510–08–P

federal register

Wednesday
May 11, 1994

Part IX

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice of proposed actions under the NIH guidelines for research involving recombinant DNA molecules (51 FR 16958).

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee at its meeting on June 9–10, 1994. After consideration of these proposals and comments by the Recombinant DNA Advisory Committee, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by May 26, 1994, will be reproduced and distributed to the Recombinant DNA Advisory Committee for consideration at its June 9–10, 1994, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or sent by FAX to 301–496–9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Sobol and Royston

In a letter dated October 6, 1993, Drs. Robert Sobol and Ivor Royston of the San Diego Regional Cancer Center, San Diego, California, submitted the human gene transfer protocol entitled: Injection of Glioblastoma Patients with Tumor Cells Genetically Modified to Secrete Interleukin-2 (IL–2): A Phase I Study to the Recombinant DNA Advisory Committee for formal review and approval. At the December 2–3, 1993, meeting, the Recombinant DNA Advisory Committee disapproved the original protocol. The majority of the Recombinant DNA Advisory Committee members concluded that the preclinical data derived from a previous single patient protocol was inadequate to justify the experiment. The motion to disapprove the protocol passed by a vote of 10 in favor, 5 opposed, and 1 abstention.

In a letter dated April 8, 1994, Drs. Sobol and Royston submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Curiel

In a letter dated April 13, 1994, Dr. David Curiel of the University of Alabama, Birmingham, Alabama, submitted the human gene transfer protocol entitled: Phase I Trial of a Polynucleotide Vaccine to Human Carcinoembryonic Antigen in Patients with Metastatic Colorectal Cancer to the Recombinant DNA Advisory Committee for formal review and approval.

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Evans and Robbins

In a letter dated April 13, 1994, Drs. C. H. Evans and Paul Robbins of the University of Pittsburgh, Pittsburgh, Pennsylvania, submitted the human gene transfer protocol entitled: Clinical Trial to Assess the Safety, Feasibility, and Efficacy of Transferring a Potentially Anti-arthritic Cytokine Gene to Human Joints with Rheumatoid Arthritis to the Recombinant DNA Advisory Committee for formal review and approval.

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Heslop, Brenner, and Krance

In a letter dated April 6, 1994, Drs. Helen Heslop, Malcolm Brenner, and Robert Krance of the St. Jude Children's Research Hospital, Memphis, Tennessee, submitted the human gene transfer protocol entitled: Use of Double Marking with Retroviral Vectors to Determine Rate of Reconstitution of Untreated and Cytokine Expanded CD34(+) Selected Marrow Cells in Patients Undergoing Autologous Bone Marrow Transplantation to the Recombinant DNA Advisory Committee for formal review and approval.

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Lyerly

In a letter dated April 12, 1994, Dr. H. Kim Lyerly of Duke University Medical Center, Durham, North Carolina, submitted the human gene transfer protocol entitled: A Pilot Study of Autologous Human Interleukin-2 Gene Modified Tumor Cells in Patients with Refractory or Recurrent Metastatic Breast Cancer to the Recombinant DNA Advisory Committee for formal review and approval.

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Economou, Glaspy, and McBride

In a letter dated April 11, 1994, Drs. James Economou, John Glaspy, and William McBride of the University of California, Los Angeles, California, submitted a human gene transfer protocol entitled: A Phase I Testing of Genetically Engineered Interleukin-7 Melanoma Vaccines to the Recombinant DNA Advisory Committee for formal review and approval.

VII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Freedman

In a letter dated March 22, 1993, Dr. Ralph Freedman of M.D. Anderson Cancer Center, Houston, Texas, submitted the human gene transfer protocol entitled: Use of a Retroviral Vector to Study the Trafficking Patterns of Purified Ovarian Tumor Infiltrating Lymphocyte (TIL) Populations Used in Intraperitoneal Adoptive Immunotherapy of Ovarian Cancer Patients: A Pilot Study to the Recombinant DNA Advisory Committee for formal review and approval. At its June 7–8, 1993, meeting the Recombinant DNA Advisory Committee deferred the protocol until the investigators return to the full Recombinant DNA Advisory Committee with the following:

(1) Data demonstrating efficient transduction of TIL,

(2) Sufficient information regarding demonstration of selectivity, i.e., specific trafficking of TIL to tumor,

(3) Complete statistical analysis,

(4) Revised Informed Consent document in simplified language, and

(5) Address concerns about patient responsibility for research-related costs.

The motion to defer the protocol

pending full Recombinant DNA Advisory Committee review of additional information passed by a vote of 18 in favor, 0 opposed, and no abstentions.

In a letter dated January 5, 1994, Dr. Freedman submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval. At its March 3–4, 1994, meeting, the Recombinant DNA Advisory Committee deferred the protocol until the investigator returns to the full Recombinant DNA Advisory Committee with:

(1) A modified protocol, which includes a revised treatment schema that will provide statistically significant information, and

(2) A revised Informed Consent document that adequately describes the procedures that will be performed in language understandable to lay persons. The motion to defer the protocol pending full Recombinant DNA Advisory Committee review of the additional information passed by a vote of 12 in favor, 1 opposed, and no abstentions.

In a letter dated April 13, 1994, Dr. Freedman submitted a revised protocol to the Recombinant DNA Advisory Committee for formal review and approval.

VIII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Deisseroth, Hortobagyi, and Champlin

In a letter dated April 12, 1994, Drs. Albert Deisseroth, Gabriel Hortobagyi, and Richard Champlin of the M.D. Anderson Cancer Center, Houston, Texas, submitted the human gene transfer protocol entitled: Use of Safety-Modified Retroviruses to Introduce Chemotherapy Resistance Sequences into Normal Hematopoietic Cells for Chemoprotection During the Therapy of Breast Cancer: A Pilot Trial to the Recombinant DNA Advisory Committee for formal review and approval.

IX. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Roth

In a letter dated April 12, 1994, Dr. Jack Roth of M.D. Anderson Cancer Center, Houston, Texas, submitted the human gene transfer protocol entitled: Clinical Protocol for Modification of Tumor Suppressor Gene Expression and Induction of Apoptosis in Non-Small Cell Lung Cancer (NSCLC) with an Adenovirus Vector Expressing Wildtype p53 and Cisplatin to the Recombinant DNA Advisory Committee for formal review and approval.

X. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Lotze

In a letter dated April 13, 1994, Dr. Michael Lotze of the University of Pittsburgh, Pittsburgh, Pennsylvania submitted the human gene transfer protocol entitled: IL–12 Gene Therapy Using Direct Injection of Tumor with Genetically Engineered Autologous Fibroblasts to the Recombinant DNA Advisory Committee for formal review and approval.

XI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Liu and Young

In a letter dated October 7, 1993, Drs. Johnson M. Liu and Neal S. Young of the National Institutes of Health, Bethesda, Maryland, submitted the human gene transfer protocol entitled: Retroviral Mediated Gene Transfer of the Fanconi Anemia Complementation Group C Gene to Hematopoietic Progenitors of Group C Patients to the Recombinant DNA Advisory Committee for formal review and approval. At the December 2–3, 1993, meeting, the Recombinant DNA Advisory Committee deferred the protocol until the investigators return to the full Recombinant DNA Advisory Committee with the following:

(1) Murine data demonstrating *in vivo* expression of the FACC gene and safety data accumulated over a period of ≥ 4 months demonstrating that the FACC-transduced cells do not produce any untoward effects, i.e., malignant transformation:

(2) Data (cited in Dr. Cynthia Dunbar's December 1993 data management report, Protocol #9206–025) regarding the possibility that "stem cell factor could favor the growth of leukemic versus normal progenitors during *ex vivo* culture periods;" and

(3) Revised eligibility criteria sections for both the protocol and Informed Consent document that describe the necessity for bone marrow examination following each infusion.

The consensus of the Recombinant DNA Advisory Committee was that the investigators were not required to submit this additional data until 4 weeks prior to the Recombinant DNA Advisory Committee meeting at which the information is reviewed. Submission of previously reviewed information is not required. The motion to defer the protocol pending full Recombinant DNA Advisory Committee review of additional information passed by a vote of 14 in favor, 0 opposed, and 3 abstentions.

On May 2, 1994, Drs. Liu and Young submitted additional materials relating to the human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval.

XII. Amendment to Part I–D of the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Into the Genome of Human Subjects, NIH Guidelines, Regarding Informed Consent/Dr. Zallen

During the December 2–3, 1993, Recombinant DNA Advisory Committee meeting, Dr. Gary Ellis, Director of the Office for Protection from Research Risks (OPRR), NIH, Bethesda, Maryland, responded to the written comments submitted by Dr. Zallen, Chair of the Working Group on Informed Consent Issues. Dr. Ellis noted the Recombinant DNA Advisory Committee's concern regarding specific issues that should be addressed in human gene transfer protocol Informed Consent documents, i.e., request for autopsy, recommendations for male/female contraception, separate Informed Consent documents when gene therapy is separate from a clinical protocol, commitment to long-term patient follow-up, and financial responsibility of the institution for all research-related costs. During his presentation, Dr. Ellis provided the Recombinant DNA Advisory Committee with background information regarding the roles of both OPRR and local Institutional Review Boards (IRB) in the review of research proposals involving human subjects. Dr. Ellis recommended that the Recombinant DNA Advisory Committee draft a letter outlining its specific recommendations to OPRR for distribution and consideration by the local IRBs.

In a memorandum dated December 23, 1993, Dr. Ellis further clarified the avenues that should be pursued by the Recombinant DNA Advisory Committee with regard to the "quality and content of informed consent documents into constructive changes in the informed consent process," specifically in relation to human gene transfer. Dr. Ellis recommended that the Points to Consider should be amended to introduce consistency in the Informed Consent document language.

During the March 3–4, 1994, Recombinant DNA Advisory Committee meeting, Dr. Doris Zallen, Chair of the Working Group on Informed Consent, provided a summary of the proposed amendments to Part I–D, Informed Consent of the Points to Consider. Two versions of revised Part I–D were presented:

(1) The version drafted by the working group, and

(2) A modified version incorporating the modifications suggested by Mr. Alex Capron. The Recombinant DNA Advisory Committee recommended that the working group should develop a consolidated version of part I–D which includes language from both proposed documents. The Recombinant DNA Advisory Committee suggested that questions should be prefaced with an explanation as to the necessity for the requested information.

On April 27, 1994, Dr. Zallen submitted revised amendments to part I–D, Informed Consent, of the Points to Consider in response to the specific comments posed by the Recombinant DNA Advisory Committee at its March 3–4, 1994, meeting. The proposed amendments read:

Part I–D Informed Consent

"In accordance with the requirements of DHHS regulations for the protection of human subjects (45 CFR part 46), investigators shall indicate how subjects will be informed about the proposed study, the manner in which their consent will be solicited, and that the informed consent form makes clear the special requirements of gene transfer research.

Part 1–D–1. Communication of the Study to Potential Participants

Part I–D–1–a. Which members of the research group and/or institution will be responsible for contacting potential participants and for describing the study to them? What procedures will be used to avoid potential conflicts of interest if the investigator is also providing medical care to potential subjects?

Part I–D–1–b. Where will discussions or other means of informing individuals about the proposed study take place?

Part I–D–1–c. How will the major points covered in Parts I–A through I–C of the Points to Consider be disclosed to potential participants and/or their parents or guardians in language that is understandable to them?

Part I–D–1–d. What is the length of time that the potential participants will have to make a decision about their participation in the study?

Part I–D–1–e. If the study involves pediatric or mentally handicapped subjects, how will the assent of each person be obtained?

Part I–D–2. Informed Consent Document

"Investigators submitting human gene transfer proposals for Recombinant DNA Advisory Committee review must include the Informed Consent document as approved by the local Institutional Review Board. A separate consent document should be used for the gene transfer portion of a research project when gene transfer is used as an adjunct in the study of another technique, such as when the gene is used as a 'marker' or when it is used to enhance the power of immunotherapy for cancer.

"Because of the relative novelty of the procedures that are used, the potentially irreversible consequences of the procedures performed, and the possibility that many of the potential risks remain undefined, the Informed Consent document shall include the following specific information in addition to any requirements of the DHHS regulations for the protection of human subjects (45 CFR part 46). Indicate if each of the specified items appears in the consent form or, if not in the consent form, how those items will be presented to potential subjects. Include an explanation if any of the following items is omitted from the consent process or document.

Part I–D–2–a. General Requirements of Human Subjects Research

Part I–D–2–a–(1). Description/purpose of study. "The subjects should be provided a detailed explanation in non-technical language of the purpose of the study and the procedures associated with the conduct of the proposed study, including a description of the gene-transfer component.

Part I–D–2–a–(2). Alternatives. "The consent form should indicate the availability of other therapies, including the possibility of other investigational therapies and approaches.

Part I–D–2–a–(3). Voluntary participation. "The subjects should be informed that participation in the study is voluntary and that failure to participate in the study, or withdrawal of consent, will not result in any penalty or loss of benefits to which the subjects are otherwise entitled.

Part I–D–2–a–(4). Benefits. "The subjects should be provided with an accurate description of the possible benefits, if any, of participating in the proposed study. For experiments which are not reasonably expected to provide a therapeutic benefit to subjects, the consent form shall clearly state that no direct clinical benefit to subjects is expected to occur as a result of participation in the study, although knowledge may be gained that may benefit others.

Part I–D–2–a–(5). Possible risks, discomforts, and side effects. "There should be a clear itemization in the consent form of types of adverse experiences, the relative severities, and the expected frequencies. For consistency of definition, side effects that are listed as mild should be ones which do not require a therapeutic intervention. Moderate side effects require an intervention. Severe side effects are potentially fatal or life-threatening, disabling, or require prolonged hospitalization. Rare side effects occur in less than one in one thousand subjects, uncommon side effects in less than 1% of subjects, common side effects in one to 10% of subjects, and frequent side effects are those which occur in more than 10% of subjects.

"The consent form should provide information regarding the approximate number of people who have received the genetic material under study. It is also necessary to warn potential subjects that for genetic materials previously used in relatively few or no humans, unforeseen risks are possible, including ones that could be severe.

"Any possible adverse medical consequences that may occur if the subjects withdraw from the study once the experiment has started should be indicated.

"Part I–D–2–a–(6). Costs. "The subjects should be provided with information about any financial costs associated with their participation in the experiment and in the long-term follow-up to the experiment that are not covered by the investigators or the institutions involved. Comparable financial information for other available alternatives, including other investigational therapies, should also be provided.

"In the consent form, subjects should be informed about the extent to which they will be responsible for any costs for medical treatment required as a direct result of research-related injury.

Part I–D–2–b. Specific Requirements of Gene Transfer Research

Part I–D–2–b–(1). Use of barrier contraception. "To avoid the possibility that any of the reagents employed in gene transfer research could cause harm to a developing fetus, female subjects should be informed that they should not be pregnant during the course of their participation in the study. Both male and female subjects should be informed when barrier contraception is required during the active phase of their participation in the study.

Part I–D–2–b–(2). Long-term follow-up. "To permit evaluation of long-term safety and efficacy of gene transfer, the prospective subjects should be informed that they are expected to cooperate in long-term follow-up that extends beyond the active phase of the study. A list should be provided in the consent

form of persons who can be contacted in the event that questions arise during the follow-up period. The principal investigator should request that subjects always keep the laboratory informed of a current address and telephone number.

"The subjects should also be informed that any significant findings resulting from the study will be made known to them and/or their parent or guardian including new information about the experimental procedure, the physical reactions experienced by other individuals involved in the study, and any long-term effects that have been noted.

"Part I–D–2–b–(3). Request for autopsy. "To obtain vital information about the safety and efficacy of gene transfer, subjects should be informed that at the time of death, whenever that may occur, an autopsy will be requested and that they should advise their families of this request and of its scientific and medical importance.

Part I–D–2–b–(4). Interest of media and others in the research. To alert the subjects that others may have an interest in the innovative character of the experiment and the status of treated subjects:

"The subjects should be informed that the institution and investigators will make every effort to provide protection from the media in an effort to protect participants' privacy;

"The subjects should be informed that representatives of applicable Federal agencies (e.g., NIH, Food and Drug Administration), representatives of collaborating institutions, vector suppliers, etc., will have access to medical records of the participants."

XIII. Deletion of Appendix L of the NIH Guidelines Regarding Release Into the Environment/Dr. Wivel

On April 29, 1994, Dr. Nelson Wivel of the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland, requested that Appendix L, Release into the Environment of Certain Plants, be deleted from the NIH Guidelines.

The Office of Recombinant DNA Activities (ORDA) requests that Appendix L, Release into the Environment of Certain Plants, be deleted from the NIH Guidelines based on the following:

(1) Section I of the NIH Guidelines allows experiments to proceed that are reviewed and approved by another Federal agency that has jurisdiction for review and approval without the necessity for NIH review or approval (52 FR 31849);

(2) The Recombinant DNA Advisory Committee has not reviewed any deliberate release experiment involving recombinant DNA since 1984;

(3) At its May 30–31, 1991, meeting, the Recombinant DNA Advisory Committee recommended that Section III–A–2 be deleted from the NIH Guidelines; and

(4) Experiments involving deliberate release into the environment are currently reviewed within the framework of existing Federal regulations, i.e., the Environmental Protection Agency (EPA) and the United States Department of Agriculture (USDA).

Section I of the NIH Guidelines was amended on August 24, 1987, such that any recombinant DNA experiment (other than human gene transfer) may proceed without Recombinant DNA Advisory Committee and NIH approval if it has been reviewed and approved by another Federal agency that has jurisdiction over such a proposal. The amended version (52 FR 31849) of Section I reads as follows:

Section I–A. Purpose

"* * * Any recombinant DNA experiment, which according to the NIH Guidelines requires approval by the NIH, must be submitted to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approval, or other applicable clearances, has been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval * * *."

On December 6, 1990, the Recombinant DNA Advisory Committee Planning Subcommittee recommended that the requirement for Recombinant DNA Advisory Committee review of experiments involving deliberate environmental release of organisms containing recombinant DNA be eliminated from the NIH Guidelines. This recommendation reflected the fact that the Federal regulatory agencies, the USDA and EPA, are responsible for the review and approval of environmental release experiments. The Recombinant DNA Advisory Committee reviewed the request and recommended that the following sections be deleted from the NIH Guidelines:

Section III–A–2

Deliberate release into the environment of any organism containing recombinant DNA except those listed below. The term "deliberate release" is defined as a planned introduction of recombinant DNA-containing microorganisms, plants, or animals into the environment.

Section III–A–2–a. Introductions conducted under conditions considered to be accepted scientific practices in which there is adequate evidence of biological and/or physical control of the recombinant DNA-containing organisms. The nature of such evidence is described in appendix L.

Section III–A–2–b. Deletion derivatives and single base changes not otherwise covered by the NIH Guidelines.

Section III–A–2–c. For extrachromosomal elements and microorganisms (including viruses), rearrangements and amplifications within a single genome. Rearrangements involving the introduction of DNA from different strains of the same species would not be covered by this exemption.

Based on these amendments to the NIH Guidelines, that have previously been recommended by the Recombinant DNA Advisory Committee, and the fact that the principals of planned introduction are now in place which provide a risk-assessment method by other Federal regulatory agencies, the Office of Recombinant DNA Activities requests that Appendix L be deleted from the NIH Guidelines.

Appendix L will be deleted as follows:

Appendix L. Release Into the Environment of Certain Plants

Appendix L–I. General Information

"Appendix L specifies conditions under which certain plants as specified below, may be approved for release into the environment. Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, review by the RAC Plant Working Group, and specific approval by the NIH Director. Such experiments also require the approval of the IBC before initiation. Information on specific experiments which have been approved will be available in ORDA and will be listed in appendix L–III when the Guidelines are republished.

"Experiments which do not meet the specifications of appendix L–II fall under section III–A and require RAC review and NIH and IBC approval before initiation.

Appendix L–II. Criteria Allowing Review by the RAC Plant Working Group Without the Requirement for Full RAC Review

"Approval may be granted by ORDA in consultation with the Plant Working Group without the requirement for full RAC review (IBC review is also necessary) for growing plants containing recombinant DNA in the field under the following conditions:

Appendix L–II–A. The plant species is a cultivated crop of a genus that has no species known to be a noxious weed.

Appendix L–II–B. The introduced DNA consists of well/characterized genes containing no sequences harmful to humans, animals, or plants.

Appendix L–II–C. The vector consists of DNA:

(i) From exempt host-vector systems (see Appendix C);

(ii) From plants of the same or closely related species;

(iii) From nonpathogenic prokaryotes or nonpathogenic lower eukaryotic plants;

(iv) From plant pathogens only if sequences resulting in production of disease symptoms have been deleted; or

(v) Chimeric vectors constructed from sequences defined in (i) or (iv) above. The DNA may be introduced by any suitable method. If sequences resulting in production of disease symptoms are retained for purposes of introducing the DNA into the plant, greenhouse-grown plants must be shown to be free of such sequences before such plants, their derivatives, or seed can be used in field tests.

Appendix L–II–D. Plants are grown in controlled access fields under specified conditions appropriate for the plant under study and the geographical location. Such conditions should include provisions for using good cultural and pest control practices, for physical isolation from plants of the same species outside of the experimental plot in accordance with pollination characteristics of the species, and the prevention of plants containing recombinant DNA from becoming established in the environment. Review by the IBC should include an appraisal by scientists knowledgeable of the crop, its production practices, and the local geographical conditions. Procedures for assessing alterations in and the spread of organisms containing recombinant DNA must be developed. The results of the outlined tests must be submitted for review by the IBC. Copies must also be submitted to the Plant Working Group of the RAC.

XIV. Amendment to Part VI of the Points To Consider, NIH Guidelines, Regarding Expedite Review/Dr. Wivel

On April 29, 1994, Dr. Nelson Wivel of the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland, requested that part VI, Procedures to be Followed for Expedited Review, of the Points to Consider be amended to clarify submission requirements for Expedited Review.

The Procedures to be Followed for Expedited Review currently reads:

"4. Regardless of the method of review, the Points to Consider must be the standard review for all gene transfer protocols."

The proposed amendment reads:

"4. Regardless of the method of review, the Points to Consider must be the standard review for all gene transfer protocols; therefore, submission of the Points to Consider is required."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: May 4, 1994.

Suzanne Medgyesi-Mitschang,

Acting Deputy Director for Science Policy and Technology Transfer.

[FR Doc. 94–11466 Filed 5–10–94; 8:45 am]

BILLING CODE 4140–01–P

federal register

Wednesday
May 11, 1994

Part X

The President

Presidential Determination No. 94–23—Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Proclamation 6686—Asian/Pacific American Heritage Month, 1994

Proclamation 6687—Older American Month, 1994

Federal Register
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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–23 of May 3, 1994

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $5,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of Rwandan and Burundi refugees, returnees, displaced persons, and conflict victims. These funds may be contributed to international, governmental, and non-governmental organizations, as appropriate.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 3, 1994.

[FR Doc. 94–11623
Filed 5–9–94; 9:33 am]
Billing code 4710–10–M

Presidential Documents

Proclamation 6686 of May 9, 1994

Asian/Pacific American Heritage Month, 1994

By the President of the United States of America

A Proclamation

The Pacific Ocean is ringed by some of the most populous, dynamic, and promising countries the world has ever known. So rapid has the progress been in this region that the new Pacific community has come to exemplify the ideals of growth and prosperity. America is well-placed to play a major role in that thriving community, not only because of geography and history, but also because of the leading role that countless Americans of Asian/Pacific descent play in our diverse society.

Americans of Asian and Pacific ancestry share twin heritages—the stimulating cultural legacy of the lands of their ancestors and the liberty that is the birthright of every American. Drawing on the values and customs of their homelands and their expectations of America's promise, Asian/Pacific Americans have long helped to advance and enrich our Nation. We can all be profoundly grateful for their contributions to every field of human endeavor, from science, law, and literature to agriculture, commerce, government, and the arts.

Many of these achievements have been the work of brave and tireless immigrants who, through determination, creativity, intelligence, and dedication to American ideals of freedom and fairness, have added strong threads to the fabric of America's multicultural society. As they have built a community of tremendous talent and breadth, they have helped our country to usher in this new era of great opportunity and unlimited hope.

To honor the achievements of Asian/Pacific Americans and to recognize their contributions to our Nation, the Congress, by Public Law 102–450, has designated the month of May of each year as "Asian/Pacific American Heritage Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the month of May 1994, as Asian/Pacific American Heritage Month. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth 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. 94–11657
Filed 5–10–94; 11:02 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6687 of May 9, 1994

Older Americans Month, 1994

By the President of the United States of America

A Proclamation

Each year over 2 million of us become older Americans—entering a time of life that can bring new freedom, new choices, and new beginnings. Retirement years offer the freedom to strengthen family bonds and to share knowledge and talents with friends and family members. It can be a time to engage in cultural, intellectual, and recreational activities with others and to provide them with the guidance that comes from a lifetime of experience. It can be a time of new beginnings—used to pursue a second career, to gain more education, or to engage in volunteer work that makes our neighborhoods, communities, and the world a better place in which to live.

To enjoy these opportunities, we must take greater responsibility in planning for a long life. Maintaining a healthy lifestyle and staying physically fit can help us to make the most of these new freedoms, choices, and beginnings. While we in Government work to promote universal health care coverage for all Americans, all of us can encourage friends and families to pursue daily practices that promote physical and mental well-being.

This year's Older Americans Month celebration centers around the theme of long life and good health with the slogan—"Aging: An Experience of a Lifetime." I am asking all Americans to help make this theme a reality by striving to achieve healthy and productive lifestyles.

Each year, we are learning new ways to promote longer, healthier, and more rewarding lives. We can do this by learning to eat nutritiously, by giving up smoking, by moderating our consumption of alcoholic beverages, and by entering into a personal or group fitness program. New studies show that regardless of age, it's never too late to improve health and vitality.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of May 1994, as Older Americans Month. I call upon individual Americans, representatives of government at all levels, businesses, and community, volunteer, and educational groups to work to increase opportunities for older Americans and to adopt healthier lifestyles.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth 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. 94–11658
Filed 5–10–94; 11:02 am]
Billing code 3195–01–P

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S. 2005/P.L. 103–247

To make certain technical corrections, and for other purposes. (May 6, 1994; 108 Stat. 618; 1 page)

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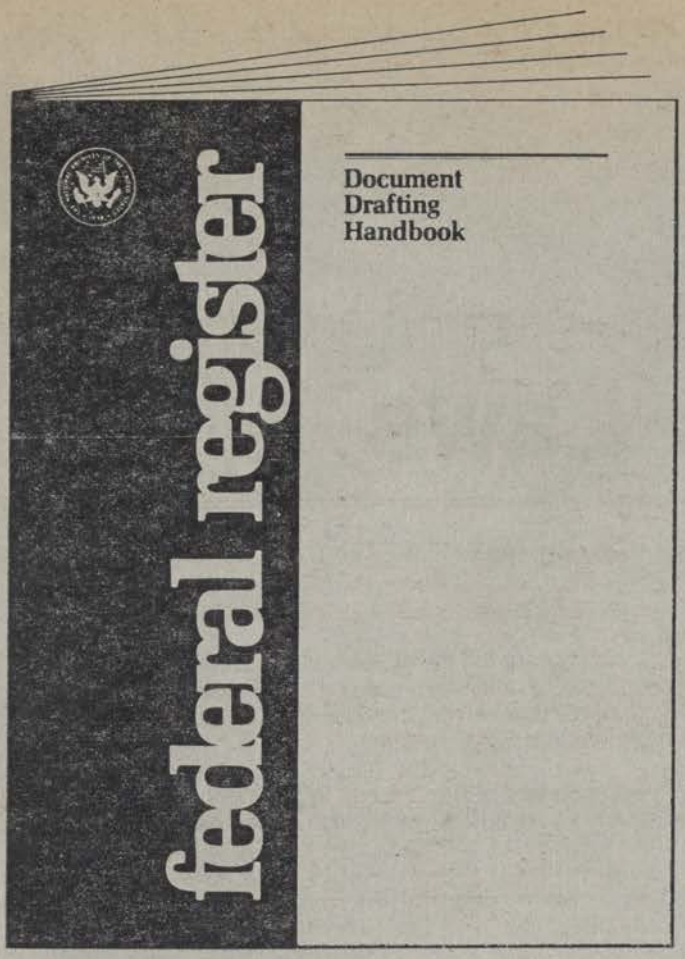

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